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In The

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1874

DAVID L. JONES, SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS, RALPH EDWARDS, COMMISSIONER OF THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS,

Appellants

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC., ON BEHALF OF ITSELF AND ALL ITS MEMBERS,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

JURISDICTIONAL STATEMENT

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INDEX

Opinion Below 1
Jurisdiction 2
Questions Presented 2
Constitutional Provisions Involved 3
Statement of the Case 3
The Questions Presented are Substantial 5
Conclusion 18
Appendix A 20
Appendix B 33
Appendix C 35
Appendix D 37

TABLE OF CASES

CHRISTMAN v. SKINNER, 468 F. 2d 723 (2nd Cir. 1972) 12

CRUZ v. BETO, 405 U.S. 319 (1972) 11, 18

DeVEAU v. BRAISTED, 363 U.S. 144 (1960) 13

FINNEY v. ARKANSAS BOARD OF CORRECTION, 505 F. 2d 194 (8th Cir. 1974) 18

FRAZIER v. CICCONE, 506 F. 2d 1022 (8th Cir. 1974) 18

GREER v. SPOCK, No. 74-848 (U.S., March 24, 1976) 14, 16, 17

HYSER v. REED, 318 F. 2d 225 (D.C. Cir.), cert. denied, 375 U.S. 957 (1963) 12

KNUCKLES v. PRASSE, 302 F. Supp. 1036 (E.D. Pa. 1969), aff'd, 435 F. 2d 1255 (3rd Cir. 1970), cert. denied, 403 U.S. 936 (1971) 13

LANZA v. NEW YORK, 370 U.S. 139 (1962) 12

MINNESOTA ex rel. PEARSON v. PROBATE COURT, 309 U.S. 270 (1940) 15

MORALES v. SCHMIDT, 489 F. 2d 1335 (7th Cir. 1973), aff'd on rehearing *en banc*., 494 F. 2d 85 (1974) 14

PAKA v. MANSON, 387 F. Supp. 111 (D.Conn. 1974) 5, 6, 18

PELL v. PROCUNIER, 417 U.S. 817 (1974) 5, 6, 14, 18

PROCUNIER v. MARTINEZ, 416 U.S. 396 (1974) 5, 18

RICHARDSON v. RAMIREZ, 418 U.S. 24 (1974) 13

ROSS v. BLACKLEGE, 477 F.2d 616 (4th Cir. 1973) 18

ROSS v. MOFFITT, 417 U.S. 600 (1974) 16

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT v RODRIGUEZ, 411 U.S. 1 (1973) 14

SHARP v. SIGLER, 408 F. 2d 966 (8th Cir. 1969) 13

UNITED STATES ex rel. MILLER v. TWOMEY, 479 F. 2d 701 (7th Cir. 1973) 9

STATUTES INVOLVED

UNITED STATES CODE:

28 U.S.C. § 1253 2

28 U.S.C. § 1343 2

28 U.S.C. § 2201 2

28 U.S.C. § 2281 2

28 U.S.C. § 2284 2

42 U.S.C. § 1983 ..... 2, 3

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

JURISDICTIONAL STATEMENT

Appellants appeal from the Judgment of the United States District Court for the Eastern District of North Carolina, entered on April 12, 1976, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal, that substantial questions are presented, and that this Court should exercise such jurisdiction in this case.

OPINION BELOW

The Memorandum Decision of the Three-Judge District Court for the Eastern District of North Carolina is not yet re-

ported. A copy of the Memorandum Decision dated March 16, 1976 is attached hereto as Exhibit A. (A. p. 20). A copy of the Judgment dated April 8, 1976 is attached hereto as Exhibit B. (A. p. 33). A copy of the Notice of Appeal filed April 26, 1976 is attached hereto as Exhibit C. (A. p. 35).

JURISDICTION

This suit was brought by the Appellee, North Carolina Prisoners' Labor Union, Inc., on behalf of itself and all its members, seeking injunctive and declaratory relief and monetary damages under the authority of 42 U.S.C. § 1983, 28 U.S.C. §§ 1343 and 2201.

A Three-Judge Court was convened pursuant to 28 U.S.C. §§ 2281 and 2284 to consider the constitutionality of regulations issued by the Secretary of the North Carolina Department of Correction on March 26, 1975 providing that "No employee of the Department shall authorize the use of Departmental facilities for such organization [declaring itself to be or acting as an inmate labor organization], negotiate, bargain with, or otherwise enter into discussion with such an organization or representative of such organization, nor permit such organization to hold meetings or assemble on Departmental property." A copy of the General policy issued March 26, 1975 is attached hereto as Exhibit D. (A. p. 37). The Memorandum Decision of the District Court was filed on March 16, 1976. The Judgment was filed on April 12, 1976 and Notice of Appeal was filed on April 26, 1976.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1253, which authorizes an appeal from an Order of a Three-Judge Court granting a permanent injunction.

QUESTIONS PRESENTED

(1) WHETHER THE NORTH CAROLINA DEPARTMENT OF CORRECTION IS REQUIRED BY THE FIRST AMENDMENT AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, TO EXTEND TO THE NORTH CAROLINA PRISONER'S LABOR UNION, INC., THE IDENTICAL PRIVILEGES EXTENDED TO THE PROGRAMS OF THE JAYCEES, ALCOHOLICS ANONYMOUS AND THE BOY SCOUTS OF AMERICA, ORGANIZATIONS WHICH PROMOTE PROGRAMS WHICH HAVE BEEN DETERMINED TO MEET VALID REHABILITATIVE NEEDS OF THE CORRECTIONAL SYSTEM?

(2) WHETHER THE NORTH CAROLINA DEPARTMENT OF CORRECTION IS REQUIRED BY THE FIRST AMENDMENT AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, TO PERMIT THE NORTH CAROLINA PRISONERS' LABOR UNION, INC., THE PRIVILEGE OF BULK MAILING INTO THE UNITS OF THE DEPARTMENT OF CORRECTION BECAUSE THE DEPARTMENT PERMITS THAT PRIVILEGE TO THE JAYCEES?

(3) WHETHER THE NORTH CAROLINA DEPARTMENT OF CORRECTION CAN CONSTITUTIONALLY PROHIBIT INMATES IN ITS CUSTODY FROM SOLICITING AND INVITING OTHER INMATES TO JOIN THE NORTH CAROLINA PRISONERS' LABOR UNION, INC.?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

This is an action for declaratory and injunctive relief and monetary damages brought pursuant to 42 U.S.C. § 1983 against David L. Jones, Secretary of the North Carolina Department of Correction, and Ralph Edwards, Director of the

Division of Prisons of the North Carolina Department of Correction, for alleged deprivation of rights secured by the Constitution and laws of the United States. The Appellee, the North Carolina Prisoners' Labor Union, Inc. (hereinafter the "Union"), claimed that the Defendants refused to allow prisoners in their custody to meet for the purpose of forming a union, or to allow union organizers to enter the prison facilities, while permitting the existence within the prison system of other inmate organizations, among which are the Jaycees and Alcoholics Anonymous; that each of these approved organizations have chapters in numerous units and are permitted to hold meetings and have outside representatives of these organizations meet with the inmate population from time to time. Further, the Jaycees are accorded the privilege of mailing their newsletters in bulk to the various prison units at which Jaycee chapters are located.

On March 26, 1975, Appellant, David L. Jones, Secretary of the North Carolina Department of Correction, issued regulations which provided, in pertinent part, that "No employee of the Department shall authorize the use of Departmental facilities for such organization, negotiate, bargain with, or otherwise enter into discussion with such an organization or representative of such organization nor permit such organization to hold meetings or assemble on Departmental property." (Exhibit D., p. 37).

On April 25, 1975 Judge F. T. Dupree, Jr., denied the Union's Motion for Preliminary Injunction and by separate Order dated April 29, 1975, certified the pendency of an action requiring a Three-Judge Court.

On March 16, 1976, the Three-Judge Court filed a Memorandum Decision finding the Secretary's regulation to be unconstitutional and holding that (1) inmates and all other persons shall be permitted to solicit and invite other inmates to join the Union orally or by written or printed communication; (2) the Union shall be accorded the privilege of bulk mailing to the extent, and only to the extent that such a privilege is accorded other organizations; and (3) the Union and its inmate members shall be accorded the privilege of holding meetings under such limitations and control as are neutrally applied to all inmate organizations. . ." (Exhibit A., p. 20). On April 12, 1976, the Court filed a Judgment incorporating the provisions of the Memorandum Decision (Exhibit B., p. 33) which further provided that "Free persons otherwise entitled to visitation with inmates . . . shall not be denied access to such visitation by reason of their association or affiliation with the Union."

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

In reliance on what it misconceived to be the holding of PELL v. PROCUNIER, 417 U.S. 817 (1974); without giving any consideration to or even citing PAKA v. MANSON, 387 F. Supp. 111 (D. Conn. 1974) to the contra, and totally discounting the fears and concerns of the administrators of the North Carolina Department of Correction in the maintenance of "security, order and rehabilitation", PROCUNIER v. MARTINEZ, 416 U.S. 396 (1974), the District Court, citing the First Amendment and the Equal Protection clause of the Fourteenth Amendment, imposed upon the North Carolina Department of Correction the North Carolina Prisoners' Labor Union, Inc. And, of course, the District Court has now totally eliminated administrative control over such matters within the Department of Correction. So long as the Department continues to find a rehabilitative design in the programs of the Jaycees, Alcoholics Anonymous and the Boy Scouts of America, then, under the District Court's reasoning, it will be unable to deny access to any other organization and will be responsible to provide co-equal privileges with the approved organizations which were granted entry into the system as a result of their satisfying valid rehabilitative objectives. Thus, the Court has placed the Department in the position of either opening its doors and facilities to all organizations or cancelling the programs of the Jaycees, Alcoholics Anonymous and Boy Scouts of America, and thereby eliminating the Fourteenth Amendment basis to the Court's decision. It would indeed be regrettable if, in order to regain control over the Department, it would be neces-

sary to cancel the most meaningful programs currently available to prison inmates.

The design of the response of the North Carolina Department of Correction in this case was based upon PAKA v. MANSON, supra, a case involving identical concerns of the Connecticut Department of Correction in which the Connecticut District Court reached the opposite result from the North Carolina District Court. Unfortunately, our Court found no need to either cite or distinguish PAKA.

In PELL v. PROCUNIER, supra, this Court articulated the several state purposes served by imprisoning criminal offenders and the problems such imprisonment presented:

> An important function of the corrections system is the deterrence of crime. The premise is that by confining criminal offenders in a facility where they are isolated from the rest of society, a condition that most people presumably find undesirable, they and others will be deterred from committing additional criminal offenses. This isolation, of course, also serves a protective function by quarantining criminal offenders for a given period of time while, it is hoped, that the rehabilitative processes of the corrections system work to correct the offenders demonstrated criminal proclivity. Thus, since most offenders will eventually return to society, another paramount objective of the corrections system is the rehabilitation of those committed to its custody. *Finally, central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves.* It is in light of these legitimate penal objectives that a court must assess challenges to prison regulations based on asserted constitutional rights of prisoners. 417 U.S. at 822-823 (Emphasis added.)

Secretary Jones of the Department of Corrections has strongly opposed the formation of the Prisoners' Union. As he testified in his Affidavit:

> It is my belief that the responsibility for administering the prison system lies with the Secretary of Correction

and persons under his supervision. I also recognize the existence of the North Carolina Statute forbidding state agencies to negotiate with unions. Although this act might not specifically pertain to inmate unions, I believe that the spirit of the law does cover the situation. Furthermore, since the day I became Secretary of this Department, I have kept an open line of communication with inmates. I have spoken to inmates personally and discussed their problems with them. I have directed my immediate staff to respond to every complaint submitted to me by an inmate and provide the inmate with a response. Whenever any inmate made what appeared to be a legitimate complaint, either I directly or a member of my staff has taken corrective action. When the Inmate Grievance Commission [G.S. 148-101, et seq.] came into existence on July 1, 1974, I directed that the employees of the Department of Correction to cooperate with the Inmate Grievance Commission in order that that agency might be an effective and meaningful means of resolving inmate grievances. I authorized the establishment of an internal grievance procedure within the Division of Prisons. Thus, I believe that I have made every effort in keeping the lines of communication open to my office and insuring that persons in the custody of the Department of Correction would always have access to a means of airing their complaints. Because I believe that inmates have an effective means of channeling their grievances, I have refused to recognize the so-called North Carolina Prisoners' Labor Union.

The existence of a union of inmates can create a divisive element within the inmate population. In a time when the units are already seriously overcrowded, such an element could aggravate already tense conditions. The purpose of the Union may well be worthwhile projects. But it is evident that the inmate organizers could, if recognized as spokesman for all inmates, make themselves to be powerful figures among the inmates. If the Union is successful, these inmates would be in a position to misuse their

influence. After the inmate Union has become established, there would probably be nothing this Department could do to terminate its existence, even if its activities became overtly subversive to the functioning of the Department. Work stoppages and mutinies are easily foreseeable. Riots and chaos would almost inevitably result. Thus, even if the purposes of the union are as stated in the Complaint, the potential for a dangerous situation exists, a situation which would not be brought under control. Thus, my responsibilities to the people of North Carolina, to the employees of the Department of Correction, and to the inmates themselves necessitate that this Department refuse to recognize the legitimacy of the union. . . .

There was also submitted the Affidavit of Ralph Edwards, Director of the Division of Prisons. Based upon his experience in Corrections and his observations of the situation in the Division of Prisons, he testified in his Affidavit:

In evaluating the potential impact of a prisoners' union, a reasonable distinction was drawn in evaluating its purpose as a separate body composed only of inmates with the intention of shaping administrative policy. The Division of Prisons was unable to validate a substantive rehabilitative purpose or associative purpose in the design of the organization. To accept the organization objections of a prisoners' union would be to approve an organization whose design and purpose would compromise the order and security of the correctional system . . .

The Division of Prisons is specifically responsible for maintaining the secure custody of persons confined in its facilities. The goals of this Division are to maintain secure custody and to provide rehabilitation to those inmates who can be rehabilitated. As stated, only two outside organizations [Jaycees and Alcoholics Anonymous] have been permitted to form inmate organizations within the prison system. These organizations have been demonstrated to have significant rehabilitative value and may continue to function only as long as they fill a legitimate rehabilitative need of the inmates. They have also been determined not to constitute any threat to the order or

security of the institution. Neither organization purports to act as spokesman for the inmate.

The creation of an inmate union will naturally result in increasing the existing friction between the inmates and prison personnel. It can also create friction between union inmates and nonunion inmates. Furthermore, the interests of all inmates are not the same. Those inmates with long term sentences do not have the same needs and goals of those of short term inmates. It is quite possible that inmates with long term sentences would take over a union to the detriment of the prison system and persons within its custody. If a union is permitted to be organized within the prison system, a potentially uncontrollable situation will result. Even if the purposes of the union are peaceful and productive at the outset, abuse of the organization can result in a Frankenstein's monster which cannot be put down. It will enable certain inmates to establish themselves as "big men" within the prison system. They will be power figures whom other inmates believe to have special authority, special rights, and special powers. Propelling an inmate into such a position would create a hazardous situation. The security of the system itself and of the persons confined in it would inevitably be in danger. If the union maintains a foothold, there would be virtually no way to control it.

That the possibility of violence is a continuous condition of prison life is recognized in UNITED STATES ex rel MILLER v. TWOMEY, 479 F. 2d 701. The fears of Secretary Jones and Director Edwards are not unfounded.[1] While it is not yet pos-

[1]In the Deposition of James W. Mullen, Warden of the Adult Correctional Institutions for the State of Rhode Island, he testifies at page 55:

Q: Do you find any exploitation of one group of inmates by another, say the younger inmates exploited by the older inmates, or the long-termers exploiting the short termers?

A: We had the young inmates break away from the older inmates, and to us, the two words that were mentioned, the young inmates wanted to form what was called the Youth Commission, and they wanted to break away from the, what they called the over the hill gang.

Now, this is gospel truth, and this happened within the last year. The unfortunate part about it, that the young inmates didn't realize how super-violent, or they didn't believe what they read or heard about some of the older guys.

sible to make accurate predictions of future behavior of prisoners, experience does count for something.

THE BALANCE OF INTERESTS

In balancing the competing interests developed above, this Court is bound by the teachings in PELL and no greater reason is discernable for adhering to a more stringent method of interest balancing than in PELL where this Court rejected the contention of inmates that a prison regulation which provided that "Press and other news media interviews with specific individual inmates will not be permitted" violated their First

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We had 40 members of the Youth Commission stabbed. There was no more Youth Commission, no more problems. People had been arrested and charged within the institution, and that has been the end of any of that type of thing. We did have these young guys attempt to break loose from the older inmates by verbal threats or by verbal abuse, and they were handled by the older inmates without regard to prosecution or whatever. It was done openly and it was done in 5 minutes. The Youth Commission was in ruins.

Q: When you say the older inmates, would you also characterize them as the Reform Association?

A: I would say so, because my experience with them, you know, they've been through the training schools, they've been here before. They have served time in other prisons, yes.

Q: So in other words, any time you have a maverick organization, the organization which pre-exists, will attempt to quash it?

A: Yes, sir.

Warden Mullen, whom the Three-Judge Court characterizes as concluding that the National Prisoners' Reform Association at his institution "is going in a positive direction" further testifies, concerning the North Carolina situation at page 58 of his transcript as follows:

A: . . . [t]hat as far as the union is concerned, I, you know, I think it's dangerous, and again, I only—I can't discuss my situation, because I only can talk about 600, and you're talking about 13,000.

I think in looking at the picture of that situation, you know, at any given moment, through any type of communication, you could have your hands full. If the word was given that a prison in Raleigh that—I don't even know if there is one there—that at 12:00 tomorrow, boys, we don't move. We just sit there. The State of North Carolina is in big trouble. You know, you'd have to get the Army to straighten it out for that violence in such an area, so spread out, you know, in that span, you know. It scares me.

The situation here, you know, it's a little different. The State Police Barracks is right here. The National Guard Armory is 3 miles away. So, you know, I'm working at an entirely different ballgame. I think if you ever had anything that was organized, I don't think you'd have—well, I wouldn't say 13,000 people go beserk at once, because you're not going to get 100% from everybody, but I do think that looking along the lines of the type of facilities that you have, and I don't know the type of units and special offenders prison, I don't know. I think you'd have some super problems.

and Fourteenth Amendment rights, and also contentions of members of the press that they had a constitutional right to interview any inmate willing to speak to them, in the absence of an individualized determination that the particular interview might create a clear and present danger to the prison security. "In the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations [of institutional security]" and "so long as reasonable and effective means of communication remain open. . .[2] 'prison officials must be accorded great latitude.'" CRUZ v. BETO, 405 U.S. 319, 321 (1972).

The Court also relied upon the Deposition of Paul W. Keve, Director of Adult Corrections for the State of Delaware, a correctional system with an inmate population of "not quite 800" [transcript, p. 26] which "includes everybody in prison, all adults in prison in Delaware for any reason." [transcript, p. 26] Although supporting the "union model" in corrections, Director Keve describes the causes of the Central Prison, North Carolina, riot of April 18, 1968 as follows:

Q: You are aware that the riot occurred when Mr. Bounds was attempting to regain control from the so-called "bulls of the yard." The prison bosses, are you not?

A: Yes.

Q: And that a very sophisticated business had been developed by a few individuals at Central Prison?

A: Right.

Q: And that when Mr. Bounds attempted to take away an extremely profitable business from the individuals they completely took control over the inmate population and resulted in a riot?

A: Right.

Q: Is this not an example of what can happen when certain prisoners gain power in a penal institution?

A: Yes, it is an excellent example of that.

Q: And their power was for personal aggrandizement rather than the good of the institution?

A: That is right. (Transcript, pp 31-32)

[2]The following reasonable and effective means of communication are available to the inmates of the North Carolina Department of Correction:

(1) *Correspondence:*
5 NCAC 2D.0301 *Inmate Use of the Mails*
(a) Inmates may write to anyone . . .

(2) *Public Communications*
5 NCAC 2D.0502 *Access Procedure*
(d) To Prisoners
(1) Visitors may be permitted to talk to inmates of the State prison system who are willing to talk to them. The time, place, and manner of such

Additional guidance in making an analysis of whether the restriction challenged in this case is inconsistent with status as a prisoner may be derived from other cases ajudicating the legality of restraints on the associational rights of prisoners. In upholding the dismissal of the prisoner's action alleging that his right to privacy was violated by monitoring his conversations with prisoners, the Court in CHRISTMAN v. SKINNER, 468 F. 2d 723, 726 (2nd Cir. 1972), quoted from LANZA v. NEW YORK, 370 U.S. 139, 143 (1962), "'that a jail shares none of the attributes of the privacy of a home, an automobile, an office or hotel room.'" Protection of privacy does not extend to the inmates of a prison confined there after a due process determination that they have violated criminal laws and conviction of crime carries not only loss of liberty, but other impairments associated with membership in a closely supervised prison community. The range of free activity for prisoners within the prison is relatively small. Despite the prominence of the right of association among the constitutional rights enjoyed by citizens, it is clear that a convicted felon, even after he has been released from prison on parole, may have substantial restrictions placed upon his associational relations with other persons. In illustrating the extent to which a parolee's liberty may be curtailed, the Court in HYSER v. REED, 318 F. 2d 225, 239 (D.C. Cir.) (Burger, J.), cert. denied 375 U.S. 957 (1963), said:

> The United States cannot constitutionally impair a citizen's right to leave the District of Columbia or frequent pool halls, but it can do so to Hyser and other appellants [parolees] whose freedoms have been substantially abridged in accordance with the requirements of due process.

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conversations shall be subject to restrictions appropriate to the parties and circumstances.

(2) Media representatives may be permitted to interview inmates of the State prison system who consent in writing to be interviewed for a stated purpose and without compensation. . . .

(3) *Inmate Grievance Procedures*

N.C.G.S. § 148-101 et seq., *Inmate Grievance Commission* -

The Inmate Grievance Commission is established as a separate agency within

Freedom to worship collectively which is an associational right explicitly protected by the Free Exercise Clause of the First Amendment may be curtailed if it threatens prison discipline or security. SHARP v. SIGLER, 408 F. 2d 966 (8th Cir. 1969); KNUCKLES v. PRASSE, 302 F. Supp. 1036, 1056-1058 (E.D. Pa. 1969), aff'd, 435 F. 2d 1255 (3rd Cir. 1970), cert. denied, 403 U.S. 936 (1971).

Although the diverse activities constituting "freedom of speech . . . peaceably to assemble, and to petition the government for redress of grievances," are all designed to enable a citizen to equip himself to exercise his judgment in casting his ballot, nevertheless one convicted of a felony may be wholly deprived of the basic right to vote even though he has served his sentence. RICHARDSON v. RAMIREZ, 418 U.S. 24 (1974). It would seem to be a dubious contention that a convicted felon who can constitutionally be deprived of his franchise even after he has fully served his sentence is nonetheless entitled to constitutional protection of a right to have his vote as a prisoner weighed in a democratic process determining what programs and activities shall be permitted among prisoners. And, perhaps more relevant to the instant case, a former felon may be constitutionally barred from holding office in a union. DeVEAU v. BRAISTED, 363 U.S. 144 (1960).

In light of these precedents and the analysis of the competing interests involved in this case, it is obvious that the District Court erred in finding for the Union. Concededly the inmates' associational and speech interests may be abridged by the denial of the right to organize. Thus, on appeal this Court should conclude that the State's interest predominates and that the Secretary's refusal to permit the organization and operation of a prisoners' union within the prison system

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the Department of Correction. It shall consist of five members appointed by the Governor from a list of 10 persons recommended by the Council of the North Carolina State Bar. . . .

5 NCAC 2G.0301 *General*

The Inmate Grievance Procedure is designed to provide efficient administrative procedures for the resolution of complaints. The Division of Prisons seeks to reduce tension and provide a stable rehabilitative atmosphere by providing formal channels for communication of complaints. . . .

in the State of North Carolina does not constitutionally restrain any right of the inmates.

EQUAL PROTECTION

The Union asserted that the inmates in the custody of the North Carolina Department of Correction were denied equal protection because both the Jaycees and Alcoholics Anonymous are recognized and accorded the privilege of holding meetings, but the Union was not.

One possible claim is that the State has differentiated between prisoners in its custody because it permitted the Jaycees, Alcoholics Anonymous and Boy Scouts of America to organize and it denied that right to the Union. This claim may be an ingenious roundabout way of laying a foundation for the argument that the state must show "compelling state interest" to justify such a differentiation, for fundamental rights of speech and association are involved Cf. SAN ANTONIO INDEPENDENT SCHOOL DISTRICT v. RODRIGUEZ, 411 U.S. 1, 17 (1973); GREER v. SPOCK, No. 74-848 (U.S., March 24, 1976). While the attempt is intriguing, it is not wholly convincing. The well-reasoned opinion in MORALES v. SCHMIDT, 489 F. 2d 1335 (7th Cir. 1973), aff'd on rehearing *en banc*., 494 F. 2d 85 (1974), is persuasive that the State need not show a compelling state interest to differentiate between prisoners and nonprisoners. Even if this heavy standard were applied, however, adherence to the consistent point of view that, "finally, central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves", PELL v. PROCUNIER, supra, 417 U.S. at 823, would fully justify classifying the state's interest in preventing formation of a prisoners' union as "compelling".

Another possible equal protection claim is that if certain group activities were permitted within a prison, then it is arbitrary and capricious not to permit inmates to engage in any other kind of group activity they may choose. However, organizations like the Jaycees, Alcoholics Anonymous and the Boy Scouts of America which are allowed to meet within the

prison system have functions which are different from those of the Union. The specific purpose of the Union is to bring to the surface, for collective action, grievances and complaints of the prisoners. The restrictions on a state not to deny equal protection does not leave it without permission "to recognize degrees of harm" and to "confine its restrictions to those classes of cases where the need is deemed to be the clearest." MINNESOTA ex rel PEARSON v. PROBATE COURT, 309 U.S. 270, 275 (1940). Being allowed to participate in a permitted kind of group activity is not to be equated with participation in making the determination of what group activities shall be permitted. The nature of the Union and its contemplated purposes of direct participation with prison authorities in shaping administrative policy, provides a reasonable basis for distinguishing the activities of the Union from the kind of inmate participation afforded in the Jaycee and AA programs.

As Director Edwards testified in his Affidavit:

> The Complaint charges that the Inmate Labor Union is denied equal protection of the laws in that the Junior Chamber of Commerce and Alcoholics Anonymous are permitted within the prison system. I should first point out that these are the only two private organizations which are allowed to function in the North Carolina Prison system. They are permitted to operate because they have been found to demonstrate legitimate rehabilitative purposes and to fill the needs of the inmates. They both operate under specific guidelines and their activities are regulated.
>
> * * *
>
> The goal of the Alcoholics Anonymous Program is also adapted from the program structure of an organization outside the confines of the prison system. The objectives of the Alcoholics Anonymous program are to provide therapeutic support, insight, and an opportunity for productive sharing of experiences among those who have en-

counted the deteriorative effect of alcoholism. Alcoholics Anonymous is structured on a peer pressure basis which begins while the individual client is confined and is intended to have carry-over effects into Alcoholics Anonymous groups in the free community.

Prior to the development of Alcoholics Anonymous programs, it was necessary that the design of the program and the intended goals were justifiable within the confinement facilities of this State. The goals and the objectives of both the Alcoholics Anonymous and the Jaycee program were presented to correctional staff as meaningful courses of action with positive goals relative to productive restoration of offenders to active, lawful participation in the community. The goals of both organizations were scrutinized, evaluated, and approved. Operational guidelines have been drawn up in each instance following approval to certify that the primary objective of the correctional system—to maintain order and security—would not be abridged by the operation of these programs within the confines of the prison units.

Although set in the context of a military reservation, the recent decision of this Court in GREER v. SPOCK, supra, is equally applicable to the case at bar. As this Court notes in footnote 10:

> The fact that other civilian speakers and entertainers had sometime been invited to appear at Fort Dix did not of itself serve to convert Fort Dix into a public forum . . . The decision of the military authorities that a civilian lecture on drug abuse, a religious service by a visiting preacher . . . or a rock musical concert would be supportive of the military mission of Fort Dix did not leave the authorities powerless thereafter to prevent any civilian from entering Fort Dix to speak on any subject whatever.

Finally, although set in a different context, the rationale of ROSS v. MOFFITT, 417 U.S. 600 (1974) is equally applicable to the conclusion reached by the Three-Judge Court in this case:

> Despite the tendency of all rights "to declare themselves absolute to their logical extreme", there are obviously limits beyond which the equal protection analysis may be pressed without doing violence to the principles recognized in other decisions of this Court. The Fourteenth Amendment "does not require absolute equality or precisely equal advantages."

MASS MAILING

The Union also contended that its rights had been violated by the Defendants' refusal to allow the Union Newsletter to arrive in bundles for distribution.

In this regard Director Edwards testified in his Affidavit that:

> . . . [I]nmates are not prohibited from belonging to a union. They are in fact prohibited from organizing activities such as soliciting other inmates to join the Union. They are permitted to receive publications sent to them directly, but they are prohibited from receiving packets of material from unions or any other source for redistribution. This is in accordance with the Department's policy requiring publications mailed to inmates be sent directly from the publisher, . . .

Multiple copies of the Union Newsletter and other organizing materials can only be intended for distribution among inmates within the system and as a tool towards organization of a union which may be properly prohibited by prison authorities. To the extent that multiple copies necessarily imply distribution to a group, they involve different risks to the security of the institution than the individual prisoner reading his personal copy in a cell.

There is no constitutional violation in the decision to return bundled copies of the Union Newsletter and other materials clearly intended for further distribution among other inmates or for use in union organizing. As Mr. Justice Stewart clearly pointed out in GREER v. SPOCK, supra:

> The guarantees of the First Amendment have never meant "that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please."

CONCLUSION

The problems of prison management have been properly described as "complex and intractable, *** not readily susceptible of resolution by decree," a fact which finds expression in "a broad hands-off attitude towards problems of prison administration" as adopted "traditionally," by "federal courts." PROCUNIER v. MARTINEZ, 416 U.S. 396 (1974). After all, "courts possess no expertise in the conduct and management of correctional institutions." FINNEY v. ARKANSAS BOARD OF CORRECTION, 505 F. 2d 194 (8th Cir. 1974). Because of this want of judicial expertise, "prison officials must be accorded latitude in the administration of prison affairs," CRUZ v. BETO, supra; FRAZIER v. CICCONE, 506 F. 2d 1022 (8th Cir. 1974), and their judgments are entitled to "great weight" ROSS v. BLACKLEGE, 477 F. 2d 616 (4th Cir. 1973). Particularly "[W]here state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities." PROCUNIER v. MARTINEZ, supra, at 405.

It is submitted that the decision of the Three-Judge District Court in this case is a misreading of PELL v. PROCUNIER, supra, and CRUZ v. BETO, supra. Moreover, it is contra to PAKA v. MANSON. In holding the First Amendment and the Equal Protection Clause of the Fourteenth Amendment applicable to the facts of this case, the District Court has emasculated the administrative discretion of prison authorities and created an intolerable situation in which they must exercise their responsibilities. Any one of the questions presented, much less in combination, present questions of immediate, vital importance, not only to the North Carolina Department of Correction, but also to the United States Bureau

of Prisons and to the correctional systems of our sister states. We believe that the questions submitted are truly substantial to correctional administration, presenting issues of the most vital public importance and therefore respectfully submit that probable jurisdiction should be noted.

Respectfully submitted,

RUFUS L. EDMISTEN
Attorney General

Jacob L. Safron
Special Deputy Attorney General

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
THREE-JUDGE COURT
No. 75-0089-CRT

NORTH CAROLINA PRISONERS' LABOR UNION, INC., on behalf of itself and all its members,

Plaintiff

v.

DAVID L. JONES, Secretary of North Carolina Department of Correction; RALPH EDWARDS, Commissioner of North Carolina Department of Correction,

Defendants.

MEMORANDUM DECISION

(Heard February 6, 1976 Decided March 16, 1976)

Before CRAVEN, Circuit Judge, BUTLER, Senior District Judge, and DUPREE, District Judge.

Norman B. Smith (Smith, Patterson, Follin, Curtis & James, Greensboro, North Carolina) and Deborah G. Mailman, for Plaintiff; and Rufus L. Edmisten, Attorney General of North Carolina, Jacob L. Safron, Special Deputy Attorney General, and James Peeler Smith, Senior Administrative Assistant, Raleigh, North Carolina, for Defendants.

CRAVEN, Circuit Judge:

This is a suit brought pursuant to 42 U.S.C. § 1983 to redress the deprivation of constitutional rights by officers of the state acting under color of state law. The plaintiffs' corporate name is said by its counsel to be a misnomer. Permission to operate as a true "labor union" is not sought. The labor-management relations laws of the United States are thus irrelevant and are not invoked. But it is duly incorporated as an eleemosynary institution under the laws of the State of North Carolina.[1] Its members and officers are inmates of the North Carolina Department of Correction. Its stated purposes are to work legally and peacefully to alter or eliminate practices of the Department of Correction which are thought to be in conflict with the just, constitutional and social interests of all persons.

The defendants are sued in their official capacities, Mr. Jones as Secretary of the North Carolina Department of Correction, and Mr. Edwards as Commissioner of the North Carolina Department of Correction.

The complaint asks for a permanent injunction against all acts of the defendants declared to be unconstitutional, the award of $100,000 in damages, reasonable attorneys' fees, as well as the usual prayers for the taxation of costs and for such other and further relief as to the court may seem just and proper. We may put some of these prayers to one side.

Damages. Because they are not sued individually, *see Burt v. Board of Trustees*, 521 F.2d 1201 (4th Cir. 1975), any recovery obtained against these officers of the state would have to be paid out of the state treasury. The eleventh amendment bars such an award against the state, and a § 1983 action

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[1]Curiously, the Charter of Incorporation issued by the Secretary of State of North Carolina shows the corporation purposes to be "the promotion of charitable labor union purposes" and to organize a "prisoners' labor union at every prison and jail in North Carolina to seek through collective bargaining . . . to improve . . . working . . . conditions . . .."

Since it is clear beyond argument that no association of prisoners may operate as a true labor union pursuant to the NLRA, and this Union disclaims any such intention, and since it is also clear that the State may lawfully refuse to negotiate with or contract with any labor union, see p. 12 *infra*, we think it of no legal significance that the charter purports to authorize more than can lawfully be accomplished.

against officers of the state falls within the bar of the amendment whenever the monetary impact is upon the state treasury. *Edelman v. Jordan*, 415 U.S. 651, 662-663 (1974).

Attorneys' Fees. 42 U.S.C. § 1983 contains no section authorizing the award of attorneys' fees to counsel. Nor does any other act of Congress authorize such an award on the facts of this case. As will appear below, the rights of the Union and its inmate members are so narrow and the resistance of the defendants so limited it cannot be said that defendants' conduct amounts to obdurate obstinancy. *See Bradley v. School Board*, 472 F.2d 318 (4th Cir. 1972), *vacated on other grounds*, 416 U.S. 696 (1974). Since such an award is authorized neither by statute nor federal common law, it must be denied. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975).

I.

Coming to the question of injunctive relief, what we do *not* decide in this case is far more important than what we *do* decide. The most important question is whether prisoners of the state have a constitutional right to join a corporate association of inmates. The Union insists that the first amendment right of the people peaceably to assemble, and to petition the government for redress of grievances, extends to prisoners and that application of that principle validates the Union and the right of inmates to join it.

The defendants do not counter with a flat denial. Instead they take the moderate position that the right of the prisoners to assemble under the first amendment must be balanced against the need of the state to maintain order, and that the state's need is great and that of the inmates relatively minor because there are already established procedures for the channeling of grievances, including the legislatively established Inmate Grievance Commission. If we understand the defendants' position correctly, it is that they fear the possibility of concerted group action but are not gravely concerned with mere association of inmates in the Union. Thus the plaintiff's contention that the Constitution protects the right of an inmate to join an inmate association is blunted by defendants' response that it may lawfully regulate such association as to time, manner and place. Instead of being asked by the defendants to hold that plaintiff has no right to exist in the prison system, we are asked instead "to arrive at a balance between the interest of the prisoners in associating together within a prison unit and the interest of the state in maintaining internal security within the prison." Page 3, Defendants' Memorandum.

We think the broader question urged by plaintiff is not so sharply presented that we should undertake to decide it. Since the parties agree that the defendants permit inmates to join the Union, our undertaking to decide whether they may do so would be advisory. Indeed, we would lack jurisdiction to do so, but for the peripheral, and much less important questions, that may be said to constitute a case or controversy.[1A] *See Muskrat v. United States*, 219 U.S. 346 (1911).

II.

The lesser questions we *do* decide are presented us in the following fact context:

1. Inmates are permitted to join a union and have been and are being permitted to join the North Carolina Prisoners'

[1A] As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues "concrete legal issues, presented in actual cases, not abstractions," are requisite. . . . It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudical [sic] interferences upon the other.

United Public Workers v. Mitchell, 330 U.S. 75, 89-90 (1946) (footnotes omitted).

"The duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property, which are actually controverted in the particular case before it. . . . No stipulation of parties or counsel, whether in the case before the court or in any other case, can enlarge the power, or affect the duty, of the court in this regard."

Swift & Co. v. Hocking Valley Ry., 243 U.S. 281, 289 (1917).

Labor Union, Inc. Some 2,000 prisoners have already joined.[2] There are no membership dues although dues are authorized by the by-laws. The union is an organization of inmates associated together for the purpose of working for prison reform.

2. Although permitting membership, the defendants oppose the solicitation of other inmates to join and have made solicitation an infraction of its general disciplinary rules.

3. Not only is personal solicitation by inmate to inmate forbidden but so also is solicitation by correspondence or by newsletter or magazine. Indeed, solicitation by anyone by any means is prohibited.

4. Some newsletters addressed to certain inmates have been returned as nondeliverable. Because of the apprehension that such publications may contain articles slanted to encourage membership the defendants enforce their general rule forbidding the receipt of bulk mail. They will not permit an inmate to receive a bundle to be redistributed by him to other inmates.

5. Union meetings are forbidden. Employees of the Department of Correction are forbidden to negotiate with any person acting as a representative of any union, and no outsider will be admitted into a prison unit for the purpose of soliciting union membership.

6. Disparate treatment is accorded other organizations. Bundles of newsletters are allowed to be received from the Junior Chamber of Commerce, and redistribution to individual inmates is permitted.

7. Inmate members of the JC's are allowed to hold meetings in the prison units, and those meetings may be attended by outside speakers, outside JC members and friends from free society. The same is true of Alcoholics Anonymous, and in one institution a troop of the Boy Scouts of America has been permitted to operate. Prisoners are permitted to assemble for religious services.

8. Due sometimes to mistake, sometimes to gaps in the formulation of policy and its execution, and especially due to the

[2]Affidavit of Vernon W. Rich. The state neither admits nor denies that this number accurately reflects the Union's membership.

very nature of this lawsuit, there have been a number of recent incidents amounting to a denial of the sixth amendment right of a prisoner to legal representation. Most of the incidents have involved the utilization of paralegals and the suspicion of lower echelon prison administrators that the paralegals were engaged in soliciting membership rather than in the implementation of this lawsuit or other court proceedings. At no time have the defendants themselves countenanced the denial of legal representation, and it is established policy that the use of paralegals is permitted.

Both plaintiff and defendants propose detailed findings of fact that would enable us to infer whether, as a matter of penology, an inmate union is good or bad. The state has offered in evidence a book by Peter Remick titled *In Constant Fear*[3] as related to James B. Schuman, a freelance writer. Mr. Remick is an inmate at a Massachusetts prison located at Walpole. His conclusion is that attempts to liberalize traditional prison regulations and to reform Walpole have resulted in chaos and increasing violence. The plaintiff counters with a book, also received in evidence, by Paul W. Keve entitled *Prison Life and Human Worth*.[4] Mr. Keve has far better credentials than does Mr. Remick, but conversely, he is not so deeply immersed in the subject matter. He has served as Commissioner of Corrections for Minnesota and is now Director of Adult Corrections for the State of Delaware. Generally, he seems to favor more lines of communication between inmate and correctional officer, and to achieve it, favors permitting what he calls inmate councils or organizations of prisoners such as the Union in this case. We have also been furnished depositions and affidavits of other experts and persons experienced in penology including those of the defendants.

There is no consensus. The defendants sincerely believe that the very existence of the Union will increase the burdens of administration and constitute a threat of essential discipline and control. They are apprehensive that inmates may

[3]P. Remick, *In Constant Fear* (J. Shulman ed. 1975).
[4]P. Keve, *Prison Life and Human Worth* (1974).

use the Union to establish a power block within the inmate population which could be utilized to cause work slowdowns or stoppages or other undesirable concerted activity. Other experts and institution administrators discount these apprehensions. Fred Morrison, Jr., Executive Director of the North Carolina Inmate Grievance Commission and a member of the Legislative Commission on Sentencing, Criminal Punishment, and Rehabilitation, stated in an affadavit filed in this case:

> I have read the Constitution and By-laws of the North Carolina Prisoners' Labor Union, Inc. and on Christmas Day, 1974, I met personally with several inmate organizers and officers of the Prisoners' Union (NCPLU) to discuss with them the philosophy and plans of the Union. On this basis, it is my considered opinion that the North Carolina Prisoners' Labor Union, Inc. does not pose a danger to the North Carolina Department of Correction or other prison programs, nor do I believe that the Prisoners' Union poses any threat to the jurisdiction or operation of the Inmate Grievance Commission.

Warden James W. Mullen of the Rhode Island Adult Correctional Institution has permitted the National Prisoners' Reform Association, to which 99 percent of the inmate population belong, to function in his penitentiary for some four years. He continues to permit it, and while not enthusiastically for it, concludes that it is going in a positive direction and on balance is more helpful than harmful. Director Keve of Delaware points out that work stoppages have occurred at Walpole in Massachusetts and at Jersey State Prison at Leesburg at a time when neither institution had a union. In his own institution there is a union by the name of Prisoner Action Committee which Keve thinks has in no way endangered the security of the correction system and has sometimes helped management of the prison materially.

On conflicting expert opinion evidence we are left with no

firm conviction that an association of inmates is necessarily good or bad, and we decline to make the characterization. It is not necessary that we do so in order to decide the narrow issues remaining in the case.

III.

In a penal system that permits inmates to belong to a corporate union or organization, what are the rights of the prisoners and the union under the first amendment and the equal protection clause of the fourteenth amendment?

> We start with the familiar proposition that "[l]awful incarceration brings about the necessary withdrawal or limitations of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Price v. Johnston*, 334 U.S. 266, 285 (1948). See also *Cruz v. Beto*, 405 U.S. 319, 321 (1972). In the First Amendment context a corollary of this principle is that a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. Thus, challenges to prison restrictions that are asserted to inhibit First Amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections policies and goals of the corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law.
>
> *Pell v. Procunier*, 417 U.S. 817, 822 (1974).

We think *Pell* means that prisoners have a first amendment right to talk about any subject of interest to them that does not conflict with legitimate penological objectives of the institution. In a system that permits membership in a union, we are unable to perceive any substantial governmental interest in suppressing expression on the subject—whether for or against. To permit an inmate to join a union and forbid

his inviting others to join borders on the irrational.[5]

The substantial interests of the state in its penal system are the maintenance of "security, order and rehabilitation." *Procunier v. Martinez*, 416 U.S. 396, 413 (1974). "[T]he limitation of first amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved." *Id.* We are unable to perceive why it is necessary or essential to security and order in the prisons to forbid solicitation of membership in a union permitted by the authorities. This is not a case of riot. There is not one scintilla of evidence to suggest that the Union has been utilized to disrupt the operation of the penal institutions.

Nor is there any evidence tending to show that the inmates intend to operate it to hamper and interfere with the proper interests of government. Defendants' apprehension of misuse is not shared by other prison administrators of equal expertise and experience. Although the Union is said to have been active for many months and to number some 2,000 members, the record is bare of any suggestion of concerted activity. If the day should ever come that inmates threaten concerted action to force compliance with their demands and to disrupt prison discipline, the Secretary and the Commissioner are fully empowered to not only stop further solicitation of membership but to put down the Union and its adherents to whatever extent may be necessary to restore and protect security and order.

All that we hold is that the defendants, having permitted membership in a union committed to peaceful means to effect change and reform, may not at the same time forbid solicitation of membership. The same considerations, of course, apply to literature. The defendants may not refuse receipt of the Union's publications on the ground that they are calcu-

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[5]Defendants have not defined "solicitation." It is not clear whether an inmate who speaks favorably of the Union to another inmate but stops short of extending an invitation to join is guilty of breach of discipline.

Because defendants do not limit union membership [*every* inmate may lawfully join, *i.e.*, 100% of the prison population] it is difficult to discern a rational basis for the no-solicitation rule.

lated to encourage membership in the organization or solicit joining.

Nothing we have said is meant to suggest that freedom of speech in the prison context is without limitation. Indeed it is not without limitation elsewhere, *e.g.*, pornography. *See Miller v. California*, 413 U.S. 15 (1973). Although difficult of enforcement, we doubt not that the administrators could lawfully forbid any discussion of means of escape, and certainly forbid the receipt of literature on the subject. But escape is per se a breach of security. The defendants' *own* hypothesis in this case is that the existence of the Union and membership in it are not dangerous, for otherwise they would surely have undertaken to forbid membership.

The other questions presented—whether the Union may mail its literature in bulk at the cheaper rate and whether inmate members may meet together—are soluble, we think, by application of the equal protection clause of the fourteenth amendment. We need not decide these questions in a vacuum because the record is clear that organizations other than the plaintiff union are permitted the bulk mailing privilege and that the administrators allow the JC's and others to meet within the institutions. In a free society, outside the walls, it is clear that government may not pick and choose depending upon its approval or disapproval of the message or purpose of the group. *United States v. Crowthers*, 456 F.2d 1074 (4th Cir. 1972).

The question is more difficult in the prison context, but we are inclined to think that the same principle applies except where the activity proscribed is shown to be detrimental to proper penalogical objectives, subversive to good discipline, or otherwise harmful. We do not mean to suggest that prison administrators must await the convening of a court to decide whether a given activity is likely to engender unrest and disruption or pose a threat to the security of the institution. Instead, we recognize that they must act quickly and upon their best judgment in appraising potential danger. But whether or not this particular union will prove to be in the long run harm-

ful or beneficial, there is nothing in this record to support a finding of present danger to security and order. Absent such an indication, we hold that the defendants must accord to the Union and the inmate members the same privileges accorded other organizations of inmates—neither more nor less. In so holding we think it appropriate, for purposes of clarity, to affirm these propositions:

1. Whatever right of association, if any, prisoners derive from the first amendment, they have no right to form or belong to a labor union for the purpose of taking concerted action to force their demands upon prison administrators.

2. With or without the utilization of a union, inmates may not lawfully band together to resist prison discipline.

3. Prison administrators may lawfully refuse to negotiate requests or demands from any group of prison inmates whether or not organized as a union or association of prisoners.

4. Prison administrators may refuse to contract with any group or union of inmates; moreover, any such contract is void under the law of North Carolina and of no effect whatsoever. *Adkins v. City of Charlotte*, 296 F. Supp. 1068 (W.D. N.C. 1969).

5. Whatever the rights of prisoners to associate together may be, there is no right to assemble in such numbers, at such times, and at such places within the walls as they please. Even in free society, reasonable restrictions of time, place and manner are upheld against first amendment attack. *Pell v. Procunier*, *Procunier*, *supra* at 826; *Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972); *Blasecki v. City of Durham*, 456 F.2d 87 (4th Cir.), *cert. denied*, 409 U.S. 912 (1972). Regulations designed to guard against excessive congregation of numbers of prisoners and to prevent the possibility of mass action and flash riot are prima facie valid and within the sound discretion of prison administrators.

IV.

We think the problems with respect to lawyer representation and the utilization of paralegals, to which we have referred, are peripheral to the subject matter of this litigation and do not require injunctive resolution. We are convinced the defendants have never countenanced interference by their subordinates with the sixth amendment right to counsel of inmates. Nor do the defendants refuse to permit counsel to be assisted by paralegals. What caused the trouble was the no-solicitation rule. What we have said about that with respect to the right of inmates to solicit others to join is dispositive of the right of lawyers, paralegals, and any other persons from free society to encourage or solicit membership in the Union. It would be incongruous for an inmate's first amendment freedom of speech to exceed that of a free person. We therefore hold that the defendants may not forbid lawyers, paralegals or any other persons from supporting the Union and encouraging inmates to join it orally or in writing.

But that does not mean that the defendants must permit outside persons, whether paralegals, lawyers or others, to enter the prison institutions for the purpose of soliciting membership in the Union. We hold, instead, that the defendants may prohibit entry for such a purpose.[6] The distinction is that although prison administrators may not control topics of conversation, they may, and indeed must, control access to the prison inmate population. Every time a gate swings open in a penitentiary, security is breached. Every entry presents the possibility of escape and every visitor is a potential hostage.

The admission of lawyers and their assistants (paralegals) to prison institutions is permitted only to serve the sixth amendment interest and may be lawfully denied for all other purposes. For example, if the lawyer for the Union seeks access to an inmate for the purpose of preparing an appeal of our decision in this case, he may not be denied; but if instead,

[6]We assume (the record is silent) that outsiders are not granted ingress to the prison units for purposes of soliciting membership in other organizations, *e.g.*, Junior Chamber of Commerce, and that such persons come into the prisons to plan a program or put on one or to help implement some rehabilitative project. If any outsider is permitted ingress for purposes of solicitation, we think equal protection would require pro tanto treatment of free persons interested in the Union. Likewise, it goes without saying that inmate members of the Union may become entitled to be visited by free persons who are engaged with them in legitimate union projects—to the same extent that other members of free society are admitted for like purposes.

he seeks access to an inmate to further the interests of the Union other than by preparation for litigation, he may be refused. We hold that admission in such circumstances must depend upon the dominant purpose of seeking access to an inmate. If the purpose is legitimate and protected by the sixth amendment right to counsel, we think the first amendment forbids attempts to control the subject matter of discussion. To be explicit, if a lawyer or paralegal genuinely needs to interview a prisoner with respect to pending litigation, the inmate's right of representation does not vanish when in the course of the interview the lawyer remarks that he favors the Union and hopes the prisoner will join it.

We reiterate: what the defendants can control is access, not topical discussion. It is true, of course, that the rule we adopt is subject to abuse: a lawyer may represent falsely to the prison administrators that his paralegal needs access to an inmate to prepare a complaint. But our faith in the integrity of the bar is sufficient that we are not gravely concerned. And if there should be an occasional abuse, it is not too great a price to pay for liberty of speech enshrined in the first amendment and the right of representation assured by the sixth.

We hold that plaintiffs are entitled to only limited injunctive relief as follows:

1. Inmates and all other persons shall be permitted to solicit and invite other inmates to join the Union orally or by written or printed communication; provided, however, that access to inmates by outsiders for the purpose of furthering the interests of the Union and soliciting membership may be denied.

2. The Union shall be accorded the privilege of bulk mailing to the extent, and only to the extent, that such a privilege is accorded other organizations.

3. The Union and its inmate members shall be accorded the privilege of holding meetings under such limitations and control as are neutrally applied to all inmate organizations, and to the extent, and only to the extent, that other meetings of prisoners are permitted.

All other relief is denied.

Costs will be taxed against the defendants.

APPENDIX B

Filed April 12, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

THREE-JUDGE COURT

NO. 75-0089-CRT

NORTH CAROLINA PRISONERS' LABOR UNION, INC., on behalf of itself and all its members,

Plaintiff,

v.

DAVID L. JONES, Secretary of North Carolina Department of Correction; RALPH EDWARDS, Commissioner of North Carolina Department of Correction,

Defendants.

JUDGMENT

Pursuant to the findings and conclusions set forth in the Memorandum Opinion made and entered in this cause March 16, 1976, it is the ORDER, JUDGMENT and DECREE of this Court that:

Defendants David L. Jones, individually and in his official capacity as Secretary of the North Carolina Department of Correction; Ralph Edwards, individually and in his capacity as Commissioner of the North Carolina Department of Correction, their agents, employees, successors in office and any others acting in concert with them, be and each is hereby ENJOINED as follows:

1) Inmates and all other persons shall be permitted to solicit and invite other inmates to join the plaintiff Union orally

or by written or printed communication; provided, however, that access to inmates by outsiders solely for the purpose of soliciting membership may be denied except that inmate members of the Union may become entitled to be visited by free persons who are engaged with them in legitimate Union projects to the same extent that other members of free society are admitted for like purposes.

2) Free persons otherwise entitled to visitation with inmates, be they attorneys, paralegals, friends, relatives, etc. shall not be denied access to such visitation by reason of their association or affiliation with the Union.

3) The Union shall be accorded the privilege of bulk mailing to the extent that such a privilege is accorded other organizations.

4) The Union and its inmate members shall be accorded the privilege of holding meetings under such limitations and control as are neutrally applied to all inmate organizations, and to the extent that other meetings of prisoners are permitted.

5) Defendants shall not endeavor to harass, impede, transfer, subject to discipline, or otherwise punish inmates for the exercise of any of the rights established in this Judgment.

6) The Court costs incurred in these proceedings be and hereby are taxed against the defendants.

Done this the 8th day of April, 1976.

J. BRAXTON CRAVEN, JR.
United States Circuit Judge

ALGERNON L. BUTLER
Senior United States District Judge

FRANKLIN T. DUPREE, JR.
United States District Judge

APPENDIX C

Filed April 26, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

Three-Judge Court

No. 75-0089-CRT

NORTH CAROLINA PRISONERS'
LABOR UNION, INC.,
on behalf of itself and all its members,

Plaintiff

v.

DAVID L. JONES, Secretary of the
North Carolina Department of Correction;
RALPH EDWARDS, Commissioner of the
North Carolina Department of Correction,

Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that David L. Jones, Secretary of the North Carolina Department of Correction, and Ralph Edwards, Director of the Division of Prisons of the North Carolina Department of Correction, the Defendants above named, hereby appeal to the Supreme Court of the United States from the final judgment entered in the above-captioned action on the 12th day of April, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1253.

RUFUS L. EDMISTEN
Attorney General

JACOB L. SAFRON
Special Deputy Attorney General

ATTORNEYS FOR DEFENDANTS
Justice Building
Raleigh, North Carolina 27602

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 1976, a copy of the foregoing Notice of Appeal to the Supreme Court of the United States was mailed, postage prepaid, to Norman B. Smith, Esquire, 816 Southeastern Building, Greensboro, North Carolina 27401 and Deborah G. Mailman, Esquire, 115½ West Morgan Street, Raleigh, North Carolina 27601, Attorneys for Plaintiff.

JACOB L. SAFRON
Special Deputy Attorney General

APPENDIX D

General Policy

The Inmate's Grievance Procedure consisting of the Division of Prison's Internal Inmate Grievance Procedure in conjunction with the Inmate Grievance Commission created by the General Assembly is the only formal authorized method of handling inmate grievances.

All employees of the Department of Correction are prohibited from negotiating with any organization declaring itself to be or acting as an inmate labor organization. Any person, not an employee or person in the custody of the Department of Correction, purporting to be a representative or agent of such an organization, shall be prohibited from entering Department of Correction property, except to the extent that such persons would be permitted to enter Department property as a legitimate visitor under any other provision of the Department of Correction policy.

Any person, representing himself to have a legitimate purpose to be upon Department of Correction property or having a right to be on Departmental property through a privilege granted to him under Departmental regulation, who is subsequently determined by the Secretary of Correction or the Director of the Division of Prisons to be an agent or acting on behalf of an inmate union, shall be permanently prohibited from entering Department of Correction property. Any employee who acts as a representative or permits himself to be an agent of such an inmate union shall be subject to immediate dismissal.

No employee of the Department shall authorize the use of Departmental facilities for such organization, negotiate with, bargain with, or otherwise enter into discussion with such an organization or representative of such organization, nor permit such organization to hold meetings or assembly on Departmental property.

Persons in the custody of the Department of Correction are prohibited from soliciting other inmates about membership in any inmate union. If the officer in charge has reason to believe that correspondence between inmates concerns organization of an inmate union in violation of this rule, then the correspondence may be censored and if necessary delivery may be withheld. Any inmate accused of soliciting shall be subject to discipline for agitating and failing to obey a lawful order. The unit superintendent or his designated representative shall proceed against the inmate accused in accordance with established Departmental procedures.

This regulation is hereby promulgated as the official policy of the Department of Correction. This the 26th day of March, 1975.

DAVID L. JONES, Secretary of
Department of Correction

APPENDIX

Supreme Court, U. S.
FILED
JAN 21 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1874

DAVID L. JONES, SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS, RALPH EDWARDS, COMMISSIONER OF THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS,

Appellants

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC., ON BEHALF OF ITSELF AND ALL ITS MEMBERS,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Filed June 26, 1976

Probable Jurisdiction Noted November 29, 1976

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INDEX

Page

RELEVANT DOCKET ENTRIES

Complaint and Motion for Preliminary Injunction filed on March 18, 1975 in NORTH CAROLINA PRISONERS' LABOR UNION, INC., v. DAVID L. JONES, No. 75–0089–CRT (E.D. N.C.) 1

General Policy on Inmate Labor Organization issued March 26, 1975 by David L. Jones, Secretary of the North Carolina Department of Correction 37*

Memorandum Decision of the Three Judge District Court filed March 16, 1976 . . . . . 20*

Judgment of the Three Judge District Court filed April 12, 1976 . . . . . 33*

Notice of Appeal to the Supreme Court of the United States 35*

Deposition of James W. Mullen 12

Deposition of Paul W. Keve 79

. . . . . .

Affidavit of David L. Jones 119

Affidavit of Ralph D. Edwards 123

Affidavit of James Peeler Smith 130

North Carolina Department of Correction Guidebook, Commissioner's administrative directives, mail privileges of inmates 133

---

* Designates page at which it appears in the Jurisdictional Statement filed June 26, 1976.

North Carolina Department of Correction Guidebook, Commissioner's administrative directive publications received by inmates 138

Affidavit of Robbie Purner dated April 14, 1975 140

Affidavit of Nathan A. Rice 150

Affidavit of Robbie Purner dated May 30, 1975 151

Affidavit of Sherman L. 2X Cauthen 153

Affidavit of Ronnie Manning and Steve Barton 154

Affidavit of Clyde S. Odell 154

Affidavit of James O. Rice, Jr. 155

Affidavit of Henry E. Manning 156

Affidavit of Jerry S. Somerset 156

Affidavit of Deborah G. Mailman dated April 15, 1975 . .157

Affidavit of Chuck Eppinette dated April 14, 1975 164

Affidavit of Jerry Leonard, dated April 15, 1975 165

Affidavit of Carl L. Williams 165

Affidavit of James V. Rowan 169

Affidavit of Vernon W. Rich 169

Affidavit of Chuck Eppinette dated December 18, 1975 175

Affidavit of Jerry W. Leonard dated December 18, 1975 176

Affidavit of Edwin M. Speas, Jr. 178

Affidavit of Deborah G. Mailman, dated December 18, 1975 179

Affidavit of Fred G. Morrison, Jr. 180

Plaintiffs' request for admissions 181

Defendants' response to request for admissions 183

RELEVANT DOCKET ENTRIES

March 18, 1975	Plaintiff filed Complaint and Motion for Preliminary Injunction in NORTH CAROLINA PRISONERS' LABOR UNION v. JONES, No. 75-0089-CRT (E.D. N.C.)
April 11, 1975	Defendants filed Motions to Dismiss and for Summary Judgment
April 17, 1975	Hearing held on Plaintiffs' Motion for Preliminary Injunction. Plaintiff moved to convene Three Judge District Court for a determination of constitutionality of policy issued March 26, 1975 by the Defendant, David L. Jones, Secretary of the North Carolina Department of Correction, prohibiting the existence of a prisoners' labor union in the Division of Prisons of the North Carolina Department of Correction.
April 25, 1975	Order filed denying Plaintiffs' Motion for Temporary Injunctive Relief.
April 29, 1975	Order filed certifying pendency of action requiring Three Judge Court.
May 5, 1975	Designation of Three Judge District Court.
February 6, 1976	Argument before Three Judge District Court
March 16, 1976	Memorandum Opinion filed by Three Judge District Court

April 12, 1976	Judgment filed by Three Judge District Court
April 26, 1976	Defendants filed Notice of Appeal to the Supreme Court of the United States
June 26, 1976	Defendants filed Statement as to Jurisdiction
August 12, 1976	Plaintiff filed Motion to Show Cause why Defendants Should not be Held in Contempt
August 20, 1976	Hearing on Order to Show Cause held before the Honorable Robert W. Hemphill, Judge of the United States District Court for the State of South Carolina
September 2, 1976	Order filed on Plaintiff's Motion that Defendants be held in contempt of court, Judge Hemphill finding the Defendants not guilty of either criminal or civil contempt and concluding that the contempt proceeding "is an effort at harassment of the Defendants."
November 29, 1976	Probable Jurisdiction noted

IN THE INITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

NO. 75–0089–CRT.

NORTH CAROLINA PRISONERS' LABOR UNION, INC., on behalf of itself and all its members,

Plaintiff,

v.

DAVID L. JONES, Secretary of North Carolina Department of Corrections; RALPH EDWARDS, Commissioner of North Carolina Department of Corrections,

Defendants.

COMPLAINT AND MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, complaining of the Defendants, alleges and says:

I. Introduction

This is an action for preliminary and permanent injunctive relief, for declaratory relief and for damages based upon the denial to Plaintiff, a prison reform association of equal protection of the laws and other constitutionally protected rights through harassment and other measures by the North Carolina Department of Corrections.

II. Jurisdiction

Jurisdiction of the Court is invoked pursuant to Title 28 U.S.C., Section 1343 and Section 2201 et seq., and Title 42 U.S.C., Section 1983. Preliminary Injunctive Relief is allowed under Rule 65, Federal Rules of Civil Procedure.

III. Parties

A. Plaintiff, North Carolina Prisoners' Labor Union, Inc. (hereafter referred to as the Prisoners' Union) is a non-profit, tax-exempt organization incorporated under the laws of the State of North Carolina. The members, officers and Board of Directors of the Prisoners' Union are all inmates incarcerated under the North Carolina Department of Corrections. The primary goal of the Prisoners' Union is to work legally and peacefully to alter or eliminate the practices of the Department of Corrections which are in conflict with the just, constitutional and social interests of all persons. The Prisoners' Union presents no danger to the institutions or operations of the North Carolina Department of Corrections.

B. Defendants are all citizens and residents of the State of North Carolina and of the United States of America. Defendant David L. Jones is the duly appointed, qualified, and acting Secretary of the North Carolina Department of Corrections, and in this capacity he possesses and exercises the authority to establish policies and procedures for management of the institutions of that department. Defendant Ralph Edwards is the duly appointed, qualified, and acting Commissioner of the North Carolina Department of Corrections, and in this capacity he possesses and exercises control and custody of all persons serving sentences in the department.

IV. Incidents at Issue

A. The North Carolina Department of Corrections has for some time permitted the existence within the North Carolina prison system of inmate organizations among which are the Junior Chamber of Commerce (hereafter referred to as Jaycees) and Alcoholics Anonymous (hereafter referred to as A.A.). Each of these organizations has chapters in numerous units of the North Carolina prison system where they are permitted to hold meetings and to have outside representatives of the organizations meet with the inmate membership from time to time. In addition, the Jaycees publish a monthly newsletter which is mailed in bundles to the president of each unit Jaycee chapter for distribution to the unit's Jaycee membership. Further, the A.A. chapter at Central Prison is allowed to publish and distribute their own newsletter.

B. Defendants and their agents and servants, acting at all times material hereto within the scope and course of their authority, have established a policy of denying the Prisoners' Union and its members rights secured to them under the Constitution of the United States and of refusing to afford the Prisoners' Union the same rights and privileges afforded other organizations operating in the North Carolina prison system. By way of illustration but not limitation, such deprivations include:

1. Plaintiffs publish a bi-monthly newsletter which is mailed directly from the publisher to designated union representatives at the prison units for distribution to the membership. The newsletter (copies of which are hereto attached, Exhibit A and Exhibit B) presents no clear and present danger to the Department of Corrections nor does it contain any material which is obscene. While the newsletter was received and distributed at many of the prison units, the following denials occurred: a) At Davie, Yadkin and Triangle

Correctional Units, the entire package of newsletters was returned undelivered; b) At Yanceyville Unit, one newsletter from the package was delivered and all others were returned; c) At Blanche Unit, two bundles were delivered, but the newsletters were later collected from the inmates by corrections officials; d) Single copies of the newsletters which were enclosed in a certified letter to inmate Clinton Thompson at the Burgaw Unit were removed from his mail and replaced by a card stating that he was not allowed to receive the newsletter.

In each of the above instances, members to whom the newsletters were addressed but who were denied receipt thereof were also denied the right to appeal as provided by the North Carolina Department of Corrections Guidelines (attached, Exhibit C).

The above interference with the distribution of plaintiff's newsletter is a result of a policy established by Defendant Jones to prevent plaintiff from bundled receipt and distribution of their newsletter to their membership; said policy having been articulated to Unit Superintendents and to plaintiff's counsel by James P. Smith, Senior Administrative Assistant to Secretary Jones. Said policy is further in contrast to the policy which allows the Jaycee Newsletter to be received and distributed in the above described manner.

As a result of the above policy, plaintiff has been intimidated from further attempts at sending bulk mail.

II. A directive that the Prisoners' Union is not to be allowed to hold meetings has been issued by Defendant Jones to Unit Superintendents. As a result, at units where plaintiff has requested to hold meetings, the requests have been denied including units which permit Jaycees and A.A. to hold meetings. Said units include Currituck, Monroe, Catawba

County, Odom, Washington County, and Avery County.

III. Previously approved paralegal visitation on behalf of plaintiff's counsel was suddenly terminated and her paralegal associates were denied entry to prison units.

The policy to terminate such paralegal visitation was articulated by letter dated February 13, 1975, to Ms. Deborah Mailman, attorney for the Prisoners' Union, from James P. Smith, Senior Administrative Assistant to Defendent Jones (attached, Exhibit D).

By letter dated February 24, 1975, (attached, Exhibit E) Ms. Mailman informed Mr. Smith of the necessity of paralegal visitation on her behalf in order for her to provide adequate representation. To date, the termination of visiting privileges has not been rescinded. As a result Ms. Mailman has been unable to adequately represent not only the Union and its members, but also those of her clients who are not connected with the Union, but who are incarcerated.

IV. Defendants have tampered and interfered with the right of the plaintiff organization and of its individual members to access and use of the United States Mails. Such interference has exceeded that necessary to security precautions on incoming mail and includes interference with outgoing mail as well. By way of illustration but not limitation these violations include:

a) A letter from inmate and union member Terry Malik Young at Blanche Unit with enclosed affidavits concerning the Prisoners' Union Newsletter was sent to Robbie Purner addressed to P.O. Box 140, Durham, North Carolina, and postmarked March 6, 1975. This letter was cut open at the top and taped closed.

b) A personal letter from inmate Johnny Neeley to Robbie Purner at P.O. Box 2842, Durham, North Carolina, postmarked March 6, 1975, was opened at the top and taped closed.

c) A letter from inmate and union member Jim Vickers to Robbie Purner at P.O. Box 2842, Durham, North Carolina, postmarked March 12, 1975, was opened at the top and taped closed.

d) A letter from inmate and union member Joe D. Mintz to the North Carolina Prisoners' Union at Box 2842, Durham, North Carolina, was opened at the top and taped closed.

e) A letter from Robbie Purner containing Prisoners' Union memoranda mailed to J. C. Littlejohn on or about March 6, 1975, by certified mail was returned marked "Refused by Odom Prison."

f) A letter with three memorandums sent on February 8, 1975, to inmate and union member Richard Murphy was returned to Roberta Purner in a Department of Correction envelope on or about February 19, 1975.

g) Clerical supplies consisting of notepads and pens sent to John Hill on March 4, 1975, were returned from Blanche Prison Unit in a large manila envelope sent certified mail to Roberta Purner.

h) A letter sent to Roger Bradley mailed March 5, 1975, was returned by certified mail to Robbie Purner.

i) Memorandums sent to J. B. Hill, Larry Haney, Sekou Karanja, James Monroe, Vernon Rich, Merle Hunt, Ernest McIntyre and Julian Francis, each at Central Prison, were returned by Lieutenant R. J. West to Roberta Purner on March 11, 1975.

j) A letter sent to Sidney Boyd Eaves at Newton Prison Unit on February 2, 1975, was returned on March 5, 1975, marked "Moved, Not Forwardable." Plaintiff is informed and believes according to the office of the Department of Corrections Combined Records Department, Sidney Boyd Eaves was at all times from February 2, 1975, to March 5, 1975, and in fact still is at Newton Prison Unit.

k) A letter from inmate Wayne Brooks to inmate Pete Austin containing Prisoners' Union information dated September 26, 1974, was returned marked "Unauthorized by Odom Prison."

l) A certified letter to Jeff Campbell at Mecklenburg #2 Unit at Camp Greene was returned "Not at this address" two weeks after it had been sent. The envelope had been opened. Plaintiff is informed and believes that Jeff Campbell is at Camp Greene.

m) Inmate members with whom the staff of the Prisoners' Union had been conducting a steady correspondence have without explanation ceased responding to mail sent to them.

In each of the above instances, nothing mailed or returned was of a nature such as to present a danger to the Department of Corrections or the operation of its institutions, nor was the material obscene.

C. Defendants' acts, as heretofore set out, violate Plaintiff's rights under the Constitution of the United States in the following ways:

I. The refusal by defendants to allow Plaintiff to hold meetings, violates Plaintiff's right to association and assembly under the First and Fourteenth Amendments.

Further, the refusal to allow such meetings in units where other organizations are allowed to meet violates Plaintiff's Fourteenth Amendment right to equal protection of the laws.

II. The refusal by Defendants to allow the Prisoners' Union Newsletter to arrive in bundles for distribution, while allowing the Jaycee Newsletter to arrive in the same manner violates Plaintiff's Fourteenth Amendment right to equal protection of the laws. Further, the denial to Plaintiff's members of the appeal procedure set forth in the Department of Corrections Guidelines violates Plaintiff's Fifth and Fourteenth Amendment rights of due process of the law.

III. The termination of visitation rights for Plaintiff's attorney's paralegal associates denies Plaintiff the right to counsel and access to the Courts in violation of the Fifth, Sixth and Fourteenth Amendments.

IV. The termination of visiting privileges for mere association with Plaintiff violates the First, Fifth and Fourteenth Amendment rights of Plaintiff.

V. The interference with Plaintiff's mail violates Plaintiff's First Amendment right to freedom of speech. The opening of outgoing mail, without a search warrant, violates Plaintiff's Fourth Amendment right to be free of unreasonable search and seizure. The interference with Plaintiff's mail, while other organizational mail is not similarly treated, is in violation of Plaintiff's Fourteenth Amendment right to equal protection of the laws.

VI. Defendants' general policy of harassment against Plaintiff violates Plaintiff's First Amendment right to associate.

D. Plaintiff has, as a result of Defendants' unlawful acts, suffered monetary damage in the amount of One Hundred Thousand Dollars ($100,000.00).

E. Further, as a result of Defendants' unlawful acts, Plaintiff has and is continuing to suffer irreparable harm for which they possess no adequate remedy at law.

WHEREFORE, Plaintiff prays the Court:

1) That this verified Complaint be treated as a motion for preliminary injunction.

2) That this verified Complaint be treated as a motion for a permanent injunction.

3) That this verified Complaint be treated as an affidavit in support of motions for a preliminary and permanent injunction.

4) That the following acts of Defendants be declared by the Court to be unlawful and unconstitutional: a) Denial to Plaintiff of the right to send and receive their newsletter in bulk; b) Denial to Plaintiff of the right to meet; c) Denial to Plaintiff and to others sharing their counsel of the right to attorney-client, paralegal visitation; d) Interference by Defendants with Plaintiff's outgoing mail and interference beyond that necessary to security with Plaintiff's incoming mail; d) Any policy of harassment or interference with Plaintiff's right to organize.

5) That the Court issue preliminary and permanent injunctions against all acts of Defendants declared to be unconstitutional.

6) For One Hundred Thousand Dollars ($100,000.00) in damages.

7) For Plaintiff's reasonable attorney fees.

8) For a jury trial on the issue of damages.

9) That the costs of this action be taxed to Defendants.

10) For such other and further relief as to the Court seems just and proper.

/s/ Deborah G. Mailman*

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*This litigation is sponsored by the North Carolina Civil Liberties Union Foundation, Inc.

NORTH CAROLINA
WAKE COUNTY

VERNON W. RICH, being first duly sworn, deposes and says that he is a member and Vice-Chairperson of the Board of Directors of the North Carolina Prisoners' Labor Union, Inc.; that he has read the foregoing Complaint and Motion and that the same is true of his own knowledge, except as to those matters and things alleged therein on information and belief, and as to those things he believes it to be true.

/s/ Vernon W. Rich

Vernon W. Rich

[1]

DEPOSITION OF JAMES W. MULLEN

EXAMINATION BY MR. SMITH

1 Q. Would you state your name, please?

A. James Walter Mullen, M-U Double L-E-N.

2 Q. Mr. Mullen, what is your profession or occupation?

A. At the present time, I'm the Warden of the Adult Correctional Institutions for the State of Rhode Island.

3 Q. Where do you reside?

A. I reside at 45 Carnation Drive in the City of Warwick.

4 Q. How long have you occupied this position here with the correctional system of Rhode Island?

A. I've been here for two years, and formerly, I held the position as a security officer for three months on a special assignment.

5 Q. So you've been warden for two years?

A. That's correct.

6 Q. And prior to that, you had a special three month assignment,

[2]

and prior to that, did you have any service with the Rhode Island correctional system?

A. No. I was a former Captain in the Rhode Island State Police. I retired after 20 years service, and I assumed the position as the Regional Supervisor for the New England Organized Crime Intelligence Bureau. Most of my latter work and police work was involved with Court authorized wiretaps on authorized crime, between New York and Rhode Island. I spent 10 years in that field.

7 Q. Do you have any academic degrees relating to the penal system?

A. No, sir, I do not, not involving corrections. I have police, you know, F. B. I. or schools, when I was involved in Federal narcotics training schools. We have intelligence schools specifically for the use of intelligence and wiretap operations.

8 Q. Do you belong to any organizations that deal with penology and corrections?

A. I believe the Department has me connected with, who, now, I've never been to a meeting. I don't bother with too many people, with the American Correctional Association. The Department, apparently, sent in the money, but I have no input into it. I don't participate in it, and nobody's ever come here to see me, so--but, yes. I am a member,

[3]

but it's paid by the State.

9 Q. Do you receive their publications?

A. I do. I don't recall. I don't bother with it, no.

10 Q. You don't regularly read them?

A. No.

11 Q. Now, in your capacity here as warden, do you have any duties with regard to inmate organizations?

A. Yes, sir. I do.

12 Q. And what are those duties?

A. Well, here we have the National Prisoners' Reform Association. We have the Afro-American Association. We have the In-House Junior Chamber of Commerce, and at Minimum Security, we have the Lifers Association.

13 Q. The what?

A. Lifers. Now, the National Prisoners' Reform Association acts as an umbrella for the entire A. C. I., although the Afros keep their identity for their own reasons. The Vice President of the National Prisoners' Reform is a Black. That was set up that way, apparently, when they--it's not a union, when this association was formed.

14 Q. When was the National Prisoners' Reform Association set up?

A. All right. It was here when I got here, and I'm just--I have their newspapers, so I'm just--maybe I can refer

[4]

to it. I'd say it would be 4 years old.

15 Q. So it had been in existence, then, for some short period of time before you became the warden?

A. About 2 years, yes, excuse me, about a year and a half.

16 Q. And you said that the Afro-American Association was also related to the Prisoners' Reform Association in some way?

A. They have their own identity within the institution. However, they're members of the National Prisoners' Reform.

17 Q. I see, and is the National Prisoners' Reform Association, I assume by its name, that its memberships extend beyond the boundaries of Rhode Island, so you have prisoners in several states that belong to this?

A. I understand that they formed in Walpole, in Massachusetts, and they have had some problems there, but basically, this was founded here in Rhode Island.

Their headquarters are here in Rhode Island. I don't know any other states, say, out west or anywhere, that may have formed as a result of communication between institutions.

18 Q. Are the Jaycees in any way related to the Prison Reform Association?

A. Yes. The Jaycees, then, have their own identity, with outside Junior Chamber groups. However, they're members of the

[5]

National Prisoners' Reform Association.

19 Q. Now, what is the official policy of the institution as to specifically the Prison Reform Association and in general, the other inmate associations that you've identified?

A. Well, the State is set policy. I don't know of any--I do know that when they have meetings, and they request me to go, I go.

When I first came, the meetings were very frequent, because many of the men here, I knew many of the men here. We were responsible for their being in here, and the unit that I worked with, and I think we had to clear the air. There was a lot of--it wasn't resentment on me coming, it was just a question that I think they felt that I was being planted here on them.

20 Q. If I understand you correctly, because of your enforcement activities,--

A. Many of the men here--

Q. (Continued--may have resulted in getting some of the people in here?

A. Yes, sure, It was. They also thought I was a plant,

21 Q. Afraid of what your attitude would be, okay.

A. So I had meetings with these people. Now, coupled with these organizations, it's the external teams that are involved

[6]

It's people on the outside. They have outside Boards of Afro-American, the Jaycees, naturally, and the National Prison Reform Association.

They have an outside headquarters. Out of that, they've got job programs, what they call Operation Main Stream. They've got people that are hired under federal grants, that attempt to get jobs. In other words, they have a strong force outside of the institution itself.

22 Q. Let me ask you this question: in assessing your own attitudes and your own character as a prison administrator, would you say that you take a hard line approach or a soft line approach; how can you--

A. I don't know. I think I just--I'm a day to day guy. If I have to be easy, I'm easy. If I have to be hard, I'll burn them.

23 Q. Do you know what your reputation here is in the prison?

A. Yes--no--yes, because I read the newspapers that they print, and all's I say is I'm fair. That's about it.

24 Q. Well, do you regard yourself as being a reform person?

A. No, sir. I don't.

25 Q. Or an advocate of massive change?

A. No. I believe, naturally, I believe in change, and my own

[7]

opinion, you know, corrections may be going too far, too fast. I just wish, you know, everybody would take a hard look at what the hell's going on, and --

26 Q. Could you state what your basic goals and priorities are in terms of security or rehabilitiation or whatever; how do you formulate these goals for yourself?

A. Well, actually, you know, everybody would like a working, you know, a perfect setting. I'd love to see, you know, the bond issue on the institution was defeated two years in a row. In other words, $7½ million was allotted 4 years ago. Then the Federal Government pulled out, and to redo this

place it would have took about $16 million on what they had, Travisono had called the Master Plan.

Basically, what I took, well, I took over this place when it was completely as a result of a riot. There wasn't a window left in this building. I want you to understand the rules that I come in with. So my primary first year was to get the place even operational. There was no laundry. It was--everything in here was destroyed, but the outside, and basically, I went through a reconstruction period to get that, you know, into some resemblance of order, you know, physically, to this place that should have been condemned 50 years ago, and to that,

[8]

so basically, my goal was the reconstruction of this place, to get it back into some sort of order.

27 Q. And once you managed to do that, which I believe you said took about a year?

A. Yes.

28 Q. Once you reached a more normal physical situation, could you state, then, for us what your own--

A. Well, naturally, my goal is to make changes within this facility, and my primary goal is maybe to make a small maximum security, to house some of these guys that we can't handle here.

29 Q. To what extent would you say that you are concerned with maintaining order and security in

the institution?

A. Well, I think it goes--that's the way it goes. It goes security, discipline, program, and I think that's my goal.

30 Q. And programs, I take it you mean rehabilitation in general, is that correct?

A. Yes. I believe in any kind of, you know, the industry. We had just had a law passed in Rhode Island that's going to permit private industry to come into the institutions and the men will be paid a minimum wage a day.

31 Q. Now, getting back to the Prisoners' Reform Association, is

[9]

this association--you spoke about it having outside support. What is the nature of its government on the inside; in other words, does it have an autonomous inmate ruling body or is it governed from the outside, or could you spell that out for us a little bit?

A. It's controlled by the inmates themselves, and it's broken down, you know, into different parts. They have a president, they have a vice president.

32 Q. Do they elect their own officers?

A. Yes. They do.

33 Q. And board of directors?

A. They elect.

34 Q. In any way, do the officials or guards or other employees of the administration attempt to influence these elections?

A. Oh, no way whatsoever.

35 Q. How do they do it, by ballot or by open meeting, or what?

A. By ballot.

36 Q. I see, and who provides them with the facilities for voting?

A. We do. We have general population meetings for whatever reason, with no personnel there.

MISS MAILMAN: That's no custody or security personnel?

[10]

THE WITNESS: Right, yes, yes. We put them in the dining room, lock the door.

37 Q. Do they have, you say, they do have meetings, would you say how regularly they meet?

A. I believe they've been meeting on an average of every two weeks now. I haven't been to a meeting in about 6 months.

38 Q. To what extent is the population of this institution involved in the membership; in other words, half, or a third, or could you say how many of them?

A. I'd say it's 99%.

39 Q. That belong to the Reform Association?

A. Yes.

40 Q. Okay, and how about your Afro-American Association, how many would belong to that?

A. Well, they'd have to join, let's put it that way.

41 Q. Virtually every Black would belong to it?

A. Yes.

42 Q. And I assume no whites?

A. No. They do have some whites.

43 Q. They do have some whites?

A. Oh, yea, sure.

44 Q. And the Jaycees, what percentage of the population is involved in that?

[11]

A. There's about 25 active in the Jaycees.

45 Q. Out of a total population?

A. Population of this one building here is 367, I think, today with the count.

46 Q. Have you been able to detect any pressures brought upon people to force them to join the Prison Reform Association?

A. No. I don't have any evidence of any violence. I think it's just automatic. You have to join, and that's it. I don't believe people were getting hurt over this. We have this organization, and this is what we're doing, and you're a member, and you're a member.

47 Q. Are there any requirements that you pay dues or do anything?

A. Yes. They pay dues.

48 Q. How do they go about collecting their dues?

A. Well, simple matter of a transfer slip to the Association from the man. It's a paper transaction.

49 Q. From his trust account?

A. Yes.

50 Q. I see, and do any of them say that they want to decline to pay the dues, or--

A. I've never known of any such case.

51 Q. How would you characterize the leadership of the Prison Reform Association, are they lifers, long-termers,

[12]

short-termers, or could you characterize them at all?

A. I only can go by my experience. The first one was a lifer, Nicholas Palmigiano. The second was a lifer, Ronald Sweet. The third one was doing 12 years, Romeo Gabriele. The fourth one, at this point, is Thomas Ross, doing 2 years. They don't last too long as President, because there's a lot of pressure on them for change, for this, for that, you know, why aren't we doing that, when we should be doing something else, and well, this is my fourth president in 2 years. The rest of them are still here, you know.

52 Q. I take it they can call for a re-election or a recall or whatever at any time they want, to change officers; is that right?

A. I really don't know. I don't know the, you know, the structure and what they can do. I never became that interested.

53 Q. Now, to what extent do you--how do you interact, how does your administration interact with the officers and directors of the Prison Reform Association; do you negotiate with them, do you discuss with them, do you just listen to them, or how do you go about exchanging things with the Association?

A. I do it. Again, I do it myself, okay. We have had several

[13]

meetings, when I'd say a Captain or another Deputy was with me, and they, you know, they come real close to being super violent meetings. They go by their Robert's Rule of Law. They're very--they compose themselves very well. I'm the one who's sort of over reacted in several situations.

54 Q. Why was that?

THE WITNESS: What?

MR. SMITH: Why was that?

A. Well, it's like everything else. They may start off with a good idea, and say, maybe, you know, we can make this change in the visiting room, whatever, but they all seem to come back to their own personal problem, and they keep driving back into their own personal problem, or someone else's problem that's in segregation, and why is he there, you know, when the main theme of their thrust is good, all right, I consider good, but to keep them right to the specific issue, is the part where I'm going to come from now, because they get themselves involved in everybody's business but their own, and this is bad.

55 Q. Well, I take it one form of communicating with them is you go to their meetings every once in a while?

A. That's correct, sir, yes.

[14]

56 Q. Do they ask questions of you or make demands of you, how do they go about it?

A. They have an agenda that I get several days prior. Okay. This is as a result of a request of mine, because to try to keep them to specific issues.

57 Q. Again, to avoid this business of getting into irrelevant things or into individual personal problems?

A. Right.

58 Q. Rather than institutional wide problems?

A. Right.

59 Q. And you go to this meeting with this agenda, are you called upon to speak, or do you--

A. Oh, yes, positively. These are all taped by them, and if I have a negative answer, they want to know why, and I give them my reasons, and from that point on, we go, you know.

60 Q. And they might try to convince you otherwise, is that right?

A. That's correct.

61 Q. Do they sometimes convince you to change certain policies?

A. Not really. Some of the major issues that, you

know, I've said no to before, I'm still saying no to now.

62 Q. Have they gotten you to institute policy changes where the idea came from them, that is, where they came up with an

[15]

idea, have they gotten you to go along with it on some occasions?

A. Yes, yes.

63 Q. Do you know how frequently this is, that you've done things that have been requested by the Reform Association?

A. It hasn't been too often, sir.

64 Q. Can you think of some specific things that they have?

A. We've changed our visiting room procedure. We opened up, extended our visiting. What else did we do, there's been a hobby shop that's been formed. We extended the men out of their--out of the cellblock area to be in the industrial building at night, which is the first time that's been done, a select group of inmates, about 20.

Specific things, you know, it's difficult for me to remember.

65 Q. Do you in any way sit down and negotiate with them, or is this the extent of the communication,

that is, going to their meetings and discussing things with them there and either accepting them or rejecting, that is, is there anything further that you do in the way of negotiating?

A. There's a lot of off the cuff things, you know, because I'm inside a lot, and I may bump into different people.

66 Q. You mean, like an officer of the Association?

A. Yes.

[16]

67 Q. And he'll make a suggestion to you?

A. Oh, sometimes, you know, or whatever.

68 Q. You don't, in the sense, you don't negotiate in the sense of sitting down and arriving at a contract or arriving--like a union and an employer would do?

A. No, sir.

69 Q. In collective bargaining contracts, do you?

A. No.

70 Q. Do you feel that you're in any way being trapped into that situation or being pushed into having a collective bargain arrangement with the Reform Association?

A. No, none whatsoever. I've taken the position that I don't actively engage myself with the outside

groups, the outside team. If there's a problem here, it's between the inmate and myself. I don't care what direction they go in out there. They can do what they want. They can picket, they can jump off the bridge. It's in here that I deal with these people, and it's the warden and the inmate, and that's the way it's going to have to be as long as I'm here, but I got nothing against their external groups, you know.

They're going in a positive direction, for them. That's all well and good, but I just don't have the time, and that's about it.

[17]

71 Q. You say that the Reform Association and the other groups that you've identified, do have some outside people that they work with them?

A. Oh, yes. Every one of these organizations has external membership.

72 Q. And could you give us an example of some of the things that the Reform Association does on the outside, through its external members?

A. I really don't know what they do.

73 Q. Do they have such things, for example, as halfway houses, or--

A. Yes. We have halfway houses, but I do know that several of the projects have been employment for men from their external groups, but--

74 Q. You mean helping them find jobs when they get out?

A. Yes, that external group, that membership changes constantly, also, where what I think I'm trying to say is that the inmates bring them out, and--

75 Q. Make too many demands on them?

A. Yes.

76 Q. What's the character of the external groups, are they business people or former inmates or do-gooders or how would you describe the external groups?

[18]

A. It's people that have been connected. Well, let's talk about the, you know, the approximate situation, which, say, we're involved in federally aided programs for Blacks of South Providence, and people in O.I.C. on different groups, too, you know, that champion the black cause and so forth, here in the State. It's, you know, there was some mails from private corporations that got interested, through Jaycees or whatever, but again, this organization changes. The organization remains the same, but the personnel keep changing.

77 Q. And as you say, your primary duty is to take care of what's going on in the institution?

A. Right. See, I have 5 buildings. I have this one, Medium, Minimum, Men's Work Release, and I have the Women's Maximum Prison, also.

78 Q. Are these located all here in Cranston?

A. Yes. They're all pretty near, within an eyeshot of one another.

79 Q. Now, at these periodic meetings of the Reform Association, where are these meetings held?

A. Physically, within Maximum Security Building.

80 Q. And what kind of security provisions are made relating to the holding of the meetings?

[19]

A. None whatsoever. I just go in there. We have a conference room, you know, that's inside, and that's it.

81 Q. How well attended are the meetings?

A. They have pretty near perfect attendance, except if they have a, you know, if there's a visit or something involved.

82 Q. I take it there are guards present in the facility. Where would they be located in proximity to the meeting?

A. There is one in the hallway outside, but he can't hear what's going on.

83 Q. Do they ever have meetings with no correctional personnel present?

A. Yes.

84 Q. And are these meetings in any way monitored or taped?

A. No. They're not.

85 Q. Do you attempt to find out what goes on at the meetings where you're not present?

A. No, sir. I don't.

86 Q. Do they have any type of newsletter or publication?

A. Yes. They do.

87 Q. How often is that published?

A. Once a month.

88 Q. I see you have a copy of it there?

A. Yes.

[20]

89 Q. Is that an extra copy that might be marked and made a copy of the deposition, made a part of the deposition, I don't want to take your only copy?

A. It goes out all over the country.

90 Q. Well, if you don't mind, before we leave, we'll have that marked as Plaintiff's Deposition Exhibit, Mullen Deposition, Exhibit 1 and annex it to the deposition. (Whereupon, newsletter marked Plaintiff's Deposition, Mullen Deposition Exhibit Number 1 for Identification)

91 Q. What facilities are used to print the newsletter?

A. We have a modern print shop here at Maximum Security. They have an area set aside, and they can use the State's presses, and they buy their own material.

92 Q. Out of the dues, I suppose, is that correct?

A. That's correct.

93 Q. And so then the ink and the photographs and the paper would be purchased through their funds?

A. That's correct.

94 Q. And the State donates the use of its presses?

A. That's correct, sir.

95 Q. To publish it; how is it distributed?

A. They have their own mailing list. Very simple, it's right here. They have their own stamp, it's a non-profit

[21]

organization, U.S. Postage Paid, Cranston, Rhode Island, Permit Number 621.

96 Q. Who pays for the postage?

A. They do. Everything, they pay for. The State doesn't pay for anything.

97 Q. Are there any advertisements in it?

A. No.

98 Q. The copies that go to the prisoners, are these distributed in bulk or are they distributed individually?

A. They are distributed in bulk.

99 Q. And who caries out the distribution?

A. They do themselves.

100 Q. You have someone, who is on a minimum custody, then, who takes them around, and brings them?

A. No, because we have movement within--you mean on the other facilities themselves?

101 Q. Yes.

A. This is the only place where they're distributed. There will be a few at Minimum and the Women's Division, excuse me, that building is across the street, is Protective Custody, and some other security problems. They don't. They don't receive any of this, and all right, the inmates over there are not a member of this Association.

[22]

102 Q. What group is this, now, that you're referring to?

A. It's across the street, what we call Medium Security, but that isn't the name of the building, by law. It

houses protective custody and inmates and some special offenders. There is quite a few policemen over there, that type of thing.

103 Q. How large a population is that?

A. 125.

104 Q. And what's the total population of your prison system?

A. 665, I think, this morning.

105 Q. And you say these persons are not permitted to participate in the Reform Association, and they do not receive the newspaper?

A. That's correct, sir.

106 Q. Just as a matter of curiosity, have they ever voiced any desire to become involved?

A. No, no.

107 Q. Do you have any idea why?

A. Because these inmates are after those inmates.

108 Q. In other words, these are inmates that you're protecting?

A. They're special problems, yes.

109 Q. To the prison population?

A. That's correct. From street population, other

outside problems, institutional problems, narcotic problems, you

[23]

name it.

110 Q. Have you seen any indication of prisoners using the Reform Association to manipulate and dominate the other prisoners, that is, using it as a vehicle for developing power bloc or power concentrations within the prison population?

A. I believe it exists, yes.

111 Q. Could you be specific as to how it functions in that respect?

A. Well, I think you know, within any facility, it's, you know, you have the weak and the strong. I believe they have a lot to say. If they didn't like the way something went down, I think they could say, which, you know, I can't prove this happens, but, "Don't go in at 9:00, you know, and delay the count," and then somebody will say, "Well, what's the reason, well, it's because you got no nurse on duty tonight," et cetera, that sort of thing.

112 Q. Well, are you saying that the Association provides them a unique opportunity for having these dominating and manipulating roles, or is that something that's necessarily incident to prison life?

A. I just say that through this organization, they could tie this place up in a knot in 5 minutes, if they wanted to.

113 Q. Have they ever attempted to do so since you've been here?

A. Not as acting as the National Prison Reform Association.

[24]

114 Q. Have you ever seen the Prisoners' Reform Association used as an instrument to promote violence?

A. Some of their members have been involved in violence.

115 Q. Can that in any way be attributed to the activities of the Association?

A. I really don't know.

116 Q. Are you able to associate the activities of the organization, in any way, with such things as violence or riots or attempted riots or anything of that nature?

A. No, but I don't think they could stop them. I mean, the organization, itself, because again, I've been here for 2 years, and we had the National Guard in here. We had the State Police in here for 5 months. We've had violence on top of violence with this organization, in effect. If I can just go on a little bit?

117 Q. Sure.

A. The reason I didn't take these organizations on when I arrived, and I, basically, I think I told you on the telephone, you know, I take the view, you deal with people one way, and that's on the table, right. You can't--if you don't, you're going to be dealing under the table with informers, right, with any institution, and you're never going to get a clear-cut picture of possibly what's going on inside, and

[25]

I don't care what the name of it is, as long as it represents what I consider to be 99% of the inmates, and I can sit down with 5 people and say, "Listen, this is the way it is, and this is the way it's going to be, and this is the way it's going to be next week or next year," and they can have some sort of communication with me along these lines.

This is the way I feel. You have to deal with an inmate. You have to deal with him above board. If you don't, so that's why this organization, per se, doesn't bother me, because you're still the boss, so--

118 Q. Does the organization, in any way, facilitate your ability to deal with them above board?

A. Well, I'd say this, then, I have to go to what I call friends, you know. If they didn't have this, and--

119 Q. In other words, the system of the informers, and--

A. That's correct.

Q. (Continued)--that type person, and what are the other problems, if any, of using a system like that?

THE WITNESS: Of what, informers?

MR. SMITH: Yes.

A. It's very dangerous, as far as its being used, by correctional people, you know, correctional officers and so forth, but again, you know, I could get people severely hurt here.

[26]

This is what I'm thinking of.

120 Q. You have the power and authority, I suppose, to restrict the activities of this Association in some respects, is that correct, I'm aware that there is a Court Order at some time in the past, I think in 1972?

A. Right.

121 Q. That allows the Association to operate?

A. I could make life miserable for them, but it could be a two-way street, also.

122 Q. But I take it, you could restrict their activities?

A. I restrict their hours and so forth, when they can meet, when they can't meet, who comes in to see them, et cetera.

123 Q. But you could be more restrictive of them, if you

wanted to, under that Court Order, couldn't you?

A. That's correct.

124 Q. And still not be in violation of the Order; could you say why you have not elected to cut back on their activities, but have allowed them to operate in the manner in which they are operating now?

A. Well, they have been very quiet. In other words, things are moving fairly well here within, you know, within the last three months or so. There's been so many internal problems, that they've been really getting themselves

[27]

together, you know, but, you know, as we come out of the woods here and things have been fairly stabile and quiet, but there's been some major changes here, and with the furlough bill, the industry bill, the work release for lifers that would pass this year. So we have made a transfer of quite a few inmates to the new segregated unit, removed them from this building, so it's given everybody a little breathing room, really.

125 Q. As to the population of the new segregation unit, are they members of the Association?

A. Yes.

126 Q. And do they receive the newspaper?

A. Yes.

127 Q. They can't attend the meetings, though, can they?

A. No. They're separate and apart from everybody else.

128 Q. How are they able to communicate with the other members of the Association?

A. They can see them, if they're being transferred to go to the hospital, you know, million different ways.

129 Q. Do you allow them to correspond with each other in the prison, that is, to send letters or messages back and forth?

THE WITNESS: Inter-building?

MR. SMITH: Yes, sir.

[28]

A. Yes. They do.

130 Q. And to what extent do you allow the Association members to correspond with their supporters outside?

A. There is no problem, you know. We can't inspect the mail going out.

131 Q. You do not open the mail going out?

A. No. We can't. No.

132 Q. Do you open the mail coming in?

A. Yes, just for contraband, and that's it.

133 Q. Do you read the contents?

A. No. We can't.

134 Q. You just look for things that shouldn't be there, like razor blades and--

A. Right.

135 Q. Have you found, in any way, that the Reform Association creates divisive elements within the institution?

A. Again, I think that we had 5 different problems here at one time, you know. We had the Brotherhood of Correctional Officers, who's just formed within 4½ years, very vocal, violent union, okay, and then we had these inmate organizations.

I don't think that, you know, either help this institution out.

[29]

I think that, you know, both cause problems, all right, and I think the atmosphere was, you know, the Brotherhood and the N. P. R. A. and the poor warden was caught right in the middle. This was the other guy, and--

136 Q. This is when you came here?

A. They don't--didn't want to give him anything, and the inmates are hollering for everything. I think

that, bordered with the external groups of the National Prisoners' Reform Association, again, going back what I said before, I think they made them too many promises that they couldn't deliver. I think that the prisoners have been on a roller coaster for the last, you know, three or four years. There's only one person that can help them, and that's me, you know, and plus the Governor, and I think all these promises were made to these guys, that there was a new idea, you know, and they just couldn't go, fulfill them because 90% of the people in the State of Rhode Island, don't want them to have anything, you know.

So, you know, the climate--

137 Q. Do you feel that the Association has matured somewhat, having gotten over this period of inflated promises being made and then learned that they couldn't be fulfilled, have

[30]

they gotten past that now in their development?

A. Well, I think they can--I think they finally realized that, you know, they're going to get things, and they're going to get things in a reasonable manner, at a pace that the building can handle it, and with the staff that we have to work with, when they're not going to see a revolution in corrections overnight in Rhode Island.

138 Q. Do you feel now, in this present condition, that they're a divisive element in the system at all?

A. I really don't know. I haven't given it much thought, as far as the external people are concerned.

139 Q. As far as the National Prison Reform Association?

A. I don't have anything to do with it.

140 Q. On the inside?

A. You just talk to the inmates, I don't have anything to do with it.

141 Q. As far as the inmates with their internal reform association?

A. I don't know. That's their problem.

142 Q. Do you find them to be a divisive element, though, as far as your administration at the present time?

A. I just don't give it any thought. I really don't know.

143 Q. Let me ask you this: If you had your choice and you didn't have this Court Order back in '72 and you were free to

[31]

abolish the inmate organization, or any of them, would you do so at the present time?

A. I may, yes.

144 Q. Would you state which ones and why?

A. Well, then, I don't want to say which ones I'd do away with. You know, you got to go back. I took a hard look at what the hell went wrong here from, say, '65 to '70, you know. There was no violence. There was no correctional officers hurt. There was no inmates stabbed. There was no nothing. It seemed like in '70 and '71, when the Brotherhood was formed, and all these groups were formed, and it just seems like they lost the handle of the building, and I don't mean to have blind obedience, because I don't believe in that, but I think everybody was sold a bill of goods and both the people that work here and the men that have to live here, and I think, you know, the place went downhill fast from that point, and then it bounced, and we're on the bounce right now, and I don't think either of these organizations at all are needed.

I think deep down, this was the reason for the trouble, that we got this. This is both sides now, and, you know, I'm not an ombudsman or anything else. I'm just giving you my honest opinion.

[32]

145 Q. Well, to reiterate, at the present time,--

A. Right.

Q. (Continued)--would you be inclined to disestablish any of the prison organizations, if you had the right to do so, and if so, would you state your reasons?

A. I wish you'd give me a half hour to think that one over.

146 Q. Am I asking you a--

A. See, I never would say it before, so it's sort of difficult, although I have a lot of contact with this bill.

147 Q. I guess I'm asking you kind of a hard question, but do you have any--let me ask you this, do you have any strong present desire to disestablish either the Jaycees, the Reform Association, or the Afro-American Group?

A. No. I guess I'd, you know, it was here and I'm here, and I don't think I'd abolish it, no.

148 Q. Have there been any problems of work stoppages or strikes or any concerted action that has been in any way attributable to the Reform Association?

A. We have had some, yes, and to say, you know, their President says to do this, you know, you don't have that proof, but again, remember, all these people are members of this organization, that do the stoppage. Now, their goal and their concept is to-- I can't see, I forgot my glasses,

[33]

"To accomplish, promote, and to cause creative, modern, progressive, and non-violent prison reform throughout these fifty United States. In order to achieve our purpose, we have set three major goals: (1) abolish prisons as they exist and are used today. (2) Replace prisons and imprisonment with alternatives that will work; phase out awaiting trial jails. (3) Deal with the problems that are now facing

the prisoner, individual prisons, and the prison system in general."

That's their goal.

149 Q. I guess what you're saying is that some of the goals of the Association are just not consistent with practicalities of prison adminsitration?

A. That's correct, sir.

150 Q. But to get back to, let's see where I was,--

A. In other words, my situation is very different from yours, say, in North Carolina, anywhere else. Rhode Island, being so small, and you know, everybody like, knows one another. Well, there's 900,000 people, but believe me, and especially in my former job, where I knew many of these people, you know, close, I don't mean socially, I mean you have no---we have done a lot of professional work on them, and it's a very unique state where, you know, there is no lack of communication between law enforcement and these guys, because,

[34]

you know, we used to go right after them, and, you know, there is a lot of conversation, you know, with this 2-hour detention law that we have and so forth, you could grab anybody and hold them for 2 hours, and that's quite--and they couldn't move.

So that sort of thing existed, and I have that communication with these people in here. Now, so that's what makes it different, say, from a warden

in North Carolina, who, you know, maybe doesn't know the guy at that level.

I had the unique experience to see what half of them did and the bodies they left behind, and they know I know. So, you know, you're dealing with a different guy and a different situation.

151 Q. I guess the question that I was posing to you a moment ago came back to mind, is can you in any way attribute work stoppages or strikes to the activities of the Association?

A. I have to say yes.

152 Q. Could you say why?

A. Because it's the members of the Association that did what they did.

153 Q. When you say that, 99% of the inmates are members of the Association?

[35]

A. I, you know, they're talking about non-violent action.

154 Q. Do you have any, I mean, is there any evidence of this?

A. No. They didn't put out a piece of paper that says, "Don't work today until we get this," no. That doesn't work that way.

155 Q. Have you in any way been able to track these

developments down to individual officers or directors or persons with power in the organization, so that they could be in any way attributed to the Association?

A. I'd say if anything is going down, naturally, it would be the officers of this Association, not--and I say this, if they're going by their goals, why don't they stop it, and we have had mucho problems, and they know when it's going down, and they didn't do a God damned thing about it.

156 Q. You're saying that they haven't come to the guards and said something?

A. No. They haven't gone to the inmate and said, "Listen, don't do this, because you're going to get us locked up, and we're going to spend half of the summer locked up again, and we're going to get the State Police in here," no. They don't, because they can't do it, because you got, you know, it's a one-way street here. You got the inmate code and you got the administration.

[36]

157 Q. In other words, the force of this association has not been able to overcome the inmate code?

A. Positively not.

158 Q. But you don't know of any---you don't know of any measures that any correctional system has taken that really has overcome the inmate code, do you, I mean, isn't that something that's present in--

A. Again, we are different. It depends on, you know, yes. We have broken it, the other facilities, really. I mean, we don't, haven't made informers out of everybody, but again, the situation is different here. We have the Italian, we have the organized crime guys here, and they're a powerful group within their own setting. We've got real Mafiosos here, and then we have the junkies, and we got the Black population, and you got an external group, that's in here now, of 9 guys that are real shooters, that were involved in anti-mafia organization. They're all living under one roof here, and you know, well, it's a trust on them, and that's it, because they have to live so close, but that situation happens, and I can't say that, you know, "Romeo Gabriele said not to work tomorrow in the plate shop," because Romeo Gabriele already knows that they're not going to work tomorrow in the plate shop, and he isn't going to

tell him, "Hey, Listen, go in there. We don't want any problems. This is a non-violent organization." He is not going to do that.

159 Q. Why is he not going to do that?

A. Because he's not going to get himself involved.

160 Q. Would he be able to remain effective if he did that, would he be able to remain effective among his peers?

A. I'd say yes, because I tell him what I'm telling you, and I'll tell them all, which I have told them, you

know, it's a two-way street.

161 Q. But if I understand your testimony correctly, are you saying that the Association is failing to prevent a work stoppage;

A. You didn't--you didn't--the question didn't come down like that. I'm saying this. Let's call a spade a spade. You're trying to ask me to, you know, I'm not going to miss words. You're trying to get me to say, that have I ever had any evidence that they said, you know, do this or do that, no, sir. I didn't, but the underlying factor is they know it's going to happen, and they don't do anything about it. That's the answer.

162 Q. Now, let me ask this. I was of the impression that there was one incident when a hostage was taken, and the Reform

Association, in some way, participated in negotiating for the hostage's release, is that correct, did that incident occur here, or am I thinking of some other institution?

A. Well, it's three months, I really don't know. We had a situation about 3-1/2 years ago, and I don't know if the Asociation was formed myself, and an inmate, when I was on this other specific assignment, and he went in and got somebody out. I really don't know.

163 Q. In other words, you can't attribute that to the Association, because you don't know?

A. No. I don't let them get involved, anyway. It's my job to go in after them, and that's what I do.

164 Q. In such incidents, have you received any support from the Reform Association?

A. Not, you know, hostage situation, no. I'd say no, because when it's that point, then it's my problem.

165 Q. Apart from that and understanding your role, you know, as warden, have you received anything that you could regard as support or cooperation from the officers, directors, or other leadership of the Reform Association during any times of tension or difficulty or any physical difficulty of any sort here?

A. Yes, I would say so.

[39]

166 Q. Could you particularize that a little bit for us?

A. No. I think, you know, possibly there's been so many problems here, that I think, you know, everybody just got worn out, and I think you had them go around and not acting as the National Prisoner Reform Association, but, you know, but some responsible guys, you know, that did try to straighten the problem out with them, you know. They were terribly, terribly divided among themselves.

167 Q. These so-called responsible people, were they at the same time, any of them, leaders of the Reform Association?

A. Some of them, yes.

168 Q. Let me ask you this: do you have a prison grievance procedure, a formal grievance procedure?

A. Yes.

169 Q. Is that administered by external commission or by the--

A. No. The Deputy Warden--there is the Deputy Warden in charge of each facility, and specifically, I'm talking in this building now, Maximum. They have a grievance board of 2 or 3 people. I forget who they are now, and they did see the Deputy whenever, and it's more or less minor, in-house problems. It's been working out very well, but that's nothing to do with--well, yes, possible it is an offshoot of the N. P. R. A.

[40]

170 Q. Well, does the Reform Association concern itself with problems or issues that aren't within the grievance procedure?

A. At one point, they concerned themselves with every issue that you could imagine.

171 Q. So their concerns are broader than what your grievance procedure provides for?

A. That's correct.

172 Q. I take it you don't have an external grievance procedure with a commission or something that

sends in outside people, is that right; in other words, it stops with yourself, is that it?

A. Yes. The Governor has--there is a Governor's Commission to the Department of Corrections. It's made up of 26 people.

173 Q. Do they hear grievances from the prisoners?

A. They have, because we were involved in brutality suite here, and we were found guilty in Federal Court.

174 Q. How did you hear a grievance, let's say that something goes to one--

A. They can come into any institution, any time any day, and see anything or go anywhere.

175 Q. Do they hear appeals from yourself or from your Deputy Wardens?

A. No, sir. In other words, if they get any information that neglect or brutality, or whatever is going on, I have given

[41]

them this authority to come into any facility at any given moment.

176 Q. This is an independent citizen's investigation group?

A. Appointed by the Governor.

177 Q. But they don't handle grievances as such, do they, I

mean, do they get prisoner grievances, petitions?

A. It's like everything else. What happened, the Governor appointed this Board, and naturally, he couldn't appoint all people who thought alike, you know, for obvious reasons. Many of these people who were appointed were on the external boards of the National Prisoners' Reform Association, the Afro-American Society, et cetera. Many were A. C. L. U. lawyers, some of them are--some of them are still involved in prison cases against the administration.

There is Superior Court Justices, Juvenile Court Justices, Chief of Police. So it's made up of quite a colorful group. They have their own problems. They are broken down into a sub-committee, and they make recommendations to the Governor.

To be perfectly honest with you, I'm in a real conflict with the A. C. I. Subcommittee, per se, the small group that is branched off here, and unfortunately, that's the way it is.

[42]

178 Q. I see, but they react to complaints and come in and investigate and what, make reports or what?

A. They can do anything they want to, yes, sir, to civil suits to anything else. They've got the power to do it, and many of them are very active in the courts at this point.

179 Q. Well, the grievance procedure that you have

internally, is there an appeal from the Deputy Warden to yourself?

A. No. Excuse me, you're talking about this one?

180 Q. I'm talking about an internal grievance procedure, where an inmate has a problem and he wants it resolved, a specific individual with a problem?

A. No. He has his counselor to go to, his classification officer. If he isn't satisfied and the issue is strong, you know, I'll get involved.

181 Q. So it will go from the counselor to the Deputy Warden and then to you, is that right?

A. Yes.

182 Q. Is there any appeal beyond you in that process?

A. No, sir.

183 Q. But then if he wanted to and if he still felt it wasn't right, he could get in touch with this outside committee, I suppose, at any stage along the way?

A. That's correct.

[43]

184 Q. And you call this the I. C. I., or what did you call it?

A. It's the Governor's Commission to the Department of Corrections.

185 Q. What were the letters, A. C. I., that you used a minute ago?

A. Adult Correctional Institutions. That's what all this is known as.

MR. SMITH: All right, okay. Let's take a short recess, and I'll see if there are any other questions to impose.

RECESS

186 Q. Back on the record. Then, does the Prison Reform Association, does it in any way attempt to act as a spokesman for the inmate, inmates or representatives of the inmates?

A. Yes, sir. It does.

187 Q. And I guess, is there anything that it does in that capacity that you haven't told us about already, we've discussed meetings and newspaper, is there anything else?

A. Gee, I don't know. I can't think of anything, sir, no.

188 Q. Now, this newspaper that they publish, is any control of the contents made by the administration?

A. Yes. I review it before it's printed, and I can delete what I want. I do know that. I do know we could end up, you know, in a Federal Court suit on it, you know, possibly,

[44]

but there is an unwritten agreement between myself and that, you know, if I feel, you know, it definitely is anything in poor taste, then I'll strike it.

I've done it. There's been no problems with the editors of the newspaper in that respect, but I let them say pretty near what they want, but again, I have the final judgment.

189 Q. What's the nature of the material that you've stricken out, bad language, or--

A. There was a cartoon about a correctional officer, and I took that out.

190 Q. You mean it was about a specific officer?

A. Yes, and an inmate said something about me, and it was false, and I challenged the article, and it was stricken.

191 Q. What do you mean, you challenged it?

A. Well, I went in and pulled the inmate out, took him to the editor of the newspaper and told him he was a liar, and I told him the reason why and so forth, and the man admitted it. He admitted he got false information, and it was stricken. It wasn't a personality contest, it was just wrong.

192 Q. How often would you say you changed the paper, how often would you say that you require some article to be removed or

[45]

rewritten?

A. That's the only two that I've ever taken out. They've got all kinds of points of view. We've been in the real battle here with the chaplaincy team that I put out of the institutions. We have had quite a battle with the Catholic Church, which I'm a good Catholic, by the way, and this issue, more or less, revolved around that.

193 Q. Would you say that this deposition, Exhibit 1 is fairly typical and representative of the issues of the paper?

A. This one here was--this issue was basically some frustration with me over what I did to this Catholic priest, and to say it really threw up a storm with a lot of people, and basically, they wanted to hold a press conference, and I said that they could see anybody at any time, and any point within reason of the institution, and they took me up on it, and they called everybody and his brother, and basically, this issue was everybody and his brother here at the prison to talk to the inmates among the press.

MR. SMITH: You may examine.

[46]

EXAMINATION BY MR. SAFRON

194 Q. Warden Mullen, in North Carolina, we have a daily population of close of 13,000 in the North Carolina Division of Prisons.

What is your daily population here?

A. 680, sir.

195 Q. In North Carolina, we have 77 different units in the Division of Prisons for the adult population.

How many units do you have here?

A. 5, sir.

196 Q. Are those 5 all part of the same institution?

A. The structure here is known as the Adult Correctional Institution, and it's broken down into securities; Maximum, Medium, Minimum, Work Release, Women's Division.

197 Q. So those 5 institutions are all located here on this one tract of land in Cranston, Rhode Island?

A. It's all within a half a mile of one another.

198 Q. What are the work projects assigned to your institution by the state; in other words, you mentioned plates earlier. What else do you do?

A. All right. We have plates, we have a sign shop, we have the entire state printing, we have full-time education, we have 10, again, this building here, we got 10 schoolteachers,

[47]

we have college programs, we got all kinds of hobby and letter crafts, ceramic classes, photography, you

know, et cetera.

199 Q. Have you had strikes in these industries, your printing or your license plates, or anything like that, have there been work stoppages?

A. Yes, sir. There have.

200 Q. And how long have these work stoppages gone on?

A. There hasn't been one, now, a work stoppage where nobody worked. It's just that production would go down to nil. The people would physically be there, but there wouldn't be anything being done.

201 A. In North Carolina, we have one institutional complex called Caladonia, which has approximately 15,000 acres of farm land.

Now, as you may be aware, a farming operation, crops arriving at the same time, we have a cannery there which cans all the food as it's ripened, and it provides the food for our various institutions.

In the event of a work stoppage in such a situation, a year's production would be destroyed in the fields, or it would rot.

Do your have any type of installation here, in which a work stoppage would have the same effect?

[48]

A. No, sir. We don't.

202 Q. Now, it's my understanding that the Reform Association was imposed upon this institution by Federal Court Order?

A. That's correct, sir.

203 Q. And I guess that was in May of 1972, according to this paper?

A. Yes.

204 Q. Why wasn't any action taken, at the time, to perhaps contest the formation or the imposition of this organization?

A. It's very difficult, you know, not being physically on-board and being involved in that decision. I do know that our former warden was from Massachusetts, and I don't know who was advising him at that point.

You had a different director at that time, who possibly didn't challenge it. I really don't know.

205 Q. If you were in charge at that time, would you have challenged this Court opinion and sought appellate review?

A. Yes. I think I would have, for the simple reason that I've never been involved, say, with the union, or I don't like the word, "union," or organization before, and I think that, you know, the thought would have had to have been, you would have had to have thought about the idea that these men had so many personal problems, and, you know, could

they get themselves together, you know, effectively,

[49]

you know.

There was a lot of areas that you would have had to have explored, that I don't think were. I just don't think we were ready for it, and within the structure of this building, it's, and again, we go back what I told the other gentleman, I think all these organizations and unions created some chaos among one another, either planned or innocently, but that possibly put us in this situation, that is now finally attempting to stabilize.

I would have had to have done a lot of soul searching on this.

206 Q. You use the word, "chaos," and I'd like to read to you from an opinion, and it says the following: "Commencing in April 1973, a parade of horribles set in at the prison. On the second, there was an extensive riot in the Maximum Security Section, which resulted in a quarter to one-half million dollars worth of damages. On May 27, an inmate was stabbed to death. June 22 was marked by the tragedy of a correctional officer being murdered by an inmate. Additional, numerous other incidents took place, including an alleged escape plot. In the end, it became necessary to call upon the State Police to assist in the administration of the correction duties."

[50]

Is this at the time which you came into this institution?

A. That's correct, sir.

207 Q. You came in after this occurred?

A. I come in after the riot, and I was here two weeks when the correctional officer was murdered.

208 Q. And the Reform Association had been organized approximately a year prior to this riot?

A. That's correct, sir.

209 Q. Did it then become necessary to lock up all the inmates in this institution?

A. Yes, sir. It did.

210 Q. Let's see, on June the twenty-second, there was a general lock-up, apparently, for 18 days?

A. That's correct, sir.

211 Q. That's in the opinion, and what effect did you find that the Reform Association had on the riot which occurred and on the lock-up?

THE WITNESS: What effect did they have?

MR. SAFRON: Yes, either positively or negatively, what.

A. Oh, I really wasn't interested in what they had to say or

[51]

whatever. It was something that I had to do.

212 Q. Well, do you believe that they either caused the riot or helped start the riot?

A. The organization, you know, per se, couldn't stop it, unless you had 100 inmates fight 100 inmates. What happened here is that 85 guys, as far as the disturbance is concerned, or the riot was concerned, broke loose and went out of control.

The rest of our population went--returned to their cells and stayed out of it, but these 85 guys really raised hell, you know. They like grabbed guys, you know, and before it went on for about an hour and twenty minutes, but for an hour and twenty minutes, you can't imagine the damage they caused. So it wasn't a full-blown riot where everybody participated. It wasn't. It was just a hard-core bunch of guys that broke loose and took off.

They struck a Deputy Warden, and they didn't know what to do, and the next thing you know, people were getting in.

213 Q. Were any of these individuals associated with the Reform Association?

A. Yes, sir.

Q. Can you identify them?

[52]

THE WITNESS: By names?

MR. SAFRON: By names, if possible, if any of them became officers, were they officers previously, or did they become officers subsequently?

A. All's I can say is no. They didn't become officers, but they were members.

215 Q. Was it then necessary for you to call in the National Guard and the State Police at this institution?

A. The State Police were called in at that point, because I felt that the staff couldn't handle this building.

216 Q. And how long was the State Police in here?

A. About 4 or 5 months.

217 Q. Before you felt that you could maintain security with your own staff?

A. Yes, plus we had retrained about 55 to 60 guys, correctional officers, during that period. We just had too many things to do, and we couldn't do it with them loose. We had to handle it that way.

218 Q. I notice that the State of Rhode Island is a member of the New England Compact on Corrections.

Have you transferred many inmates from this institution to other states?

A. I have transferred several. Unfortunately, that the Compact

[53]

hasn't broken down, but it has happened, is both states have traded off severe problems, and our problems raised havoc in Connecticut, and their problems, in Connecticut, excuse me, in Walpole's problems, raised hell over here and it's--we just haven't been moving people.

219 Q. But at one time, you did move some, I believe, 18 inmates?

A. That was prior to my arrival, yes, sir. Yes. I'm aware of it, though.

220 Q. Well, it did result in some considerable litigation?

A. Yes, sir.

221 Q. And wasn't that a method of removing incordial inmates from your population and severing their relationships with your population?

A. That's correct, sir.

222 Q. Have you found that the leadership of the Reform Association has been inmates with an ax to grind?

MR. SMITH: Object to the form of the question.

THE WITNESS: Do you want me to answer it?

MR. SAFRON: You go ahead and answer it.

A. Well, the three that I've been--the fourth, I don't know

[54]

that well. He's been out of State for a while, and he just come back to start a 2-year sentence. The other three, I know, you know, and I really know them, Palmigiano, Nicholas, he was a life--doing life, has the administration in the Federal Court like you never seen in your life, but it's, again, it's not a personal thing with him or I, but he has an ax to grind, and that's a poor choice of words, he wants changes, and he's using the Court to try to obtain those goals. He's successful on some, and he isn't on others.

223 Q. I assume from your previous testimony, that the Reform Assocaition has not had any impact upon your decision making process?

A. Not really, you know, I'm willing to listen, and know. I can't--I can't say that, although I did testify, I did make changes as a result of listening to them in certain areas. No. They haven't--they haven't caused me to do anything spectacular.

224 Q. Now, you have testified that approximately 99% of the inmates are members.

Do you feel that percentage is the result of peer pressure?

A. I believe, sir, that there is no evidence of it, but we all know where we are, and I don't think there is any such

[55]

thing as not going into it.

225 Q. Do you find any exploitation of one group of inmates by another, say, the younger inmates being exploited by the older inmates, or the long-termers exploiting the short-termers?

A. We had the young inmates break away from many of the older inmates, and to us, the two words that were mentioned, the young inmates wanted to form what was called the Youth Commission, and they wanted to break away from the, what they called the over the hill gang.

Now, this is gospel truth, and this happened within the last year. The unfortunate part about it, that the young inmates didn't realize how super-violent, or they didn't believe what they read or heard about some of the older guys.

We had 40 members of the Youth Commission stabbed. There was no more Young Commission, no more problems. People had been arrested and charged within the institution, and that has been the end of any of that type of thing. We did have these young guys attempt to break loose from the

older inmates by verbal threats or by verbal abuse, and they were handled by the older inmates without regard to prosecution or whatever. It was

[56]

done openly, and it was done in 5 minutes. The Young Commission was in ruins.

226 Q. When you say the older inmates, would you also characterize them as Reform Association?

A. I would say so, because my experience with them, you know, they've been through the training schools, they've been here before. They have served time in other prisons, yes.

227 Q. So in other words, any time you have a maverick organization, the organization which pre-exists, will attempt to quash it?

A. Yes, sir.

MR. SAFRON: Let's take a break.

228 Q. So there has, in fact, been a power struggle, a very violent power struggle between the younger and older inmates?

A. Yes. I'd say so. It wasn't a prolonged situation. It was something that developed within a matter of weeks, and was handled by violence.

229 Q. Since the spring of 1973, when you had those unfortunate riots here, have there been any

additional situations now, of course, you referred to this violence with the Young Committee?

A. Yes.

230 Q. Besides the Youth Committee, have other acts of violence occurred here?

[57]

A. Yes, sir.

231 Q. What happened then?

THE WITNESS: What were they?

MR. SAFRON: Yes.

A. The leaders of the Afro-American Society, in trying to--in trying to press the transfer of an inmate to a lesser security, took over a situation where I was present, and demanded that this inmate be transferred, and I refused, and they didn't bother me, but they broke out, and they went into the wing, so-called, and they had to be restrained at that point by additional people, and et cetera. The following day, after what we felt the situation was over, they broke into a behavioral-custodial unit house and the special offenders, and broke them out, and they took guards hostage, and I was involved in going back in again and getting the officers out, and then we transferred these people to across the street until a new cellblock, that we had just completed for this type of inmate.

There were no negotiations. The President of the National Prisoners' Reform was told by me to get anybody and everybody out of the way, because we were coming in and grabbing these guys one way or another, and I asked him were they involved, and he said, "No," and it

[58]

was the violence among a group of Blacks, about 35,

233 Q. You described general population meetings at Maximum Security; were those meetings taking place before you became warden?

A. I don't ever believe the former warden ever allowed them to be by themselves at one shot on a population meeting. There's only been about 6, and they went off without any problems whatsoever. They were very orderly, and it involved some in-house policing among themselves, and protection for the younger inmate that was floating into the place for the first time.

In other words, they tried to get themselves together.

234 Q. Does the State of Rhode Island, through this institution, provide the Reform Association with any facilities besides, of course, the use of the printing presses here?

A. They have an office physically within the prison itself. They have their own recording secretary, clerk.

235 Q. I noted that you have a certain feeling about the use of the word, "union."

Would you please describe to us what your reaction is to a prisoner's union?

A. Well, you know, my initial reaction is, you know, that as far as the union is concerned, I, you know, I think it's

[59]

dangerous, and again, I only—I can't discuss my situation, because I only can talk about 600, and you're talking about 13,000.

I think in looking at the picture of that situation, you know, at any given moment, through any type of communication, you could have your hands full. If the word was given that a prison in Raleigh that——I don't even know if there is one there——that at 12:00 tomorrow, boys, we don't move. We just sit there. The State of North Carolina is in big trouble. You know, you'd have to get the Army to straighten it out for that violence in such an area, so spread out, you know, in that span, you know. It scares me.

The situation here, you know, it's a little different. The State Police Barracks is right here. The National Guard Armory is 3 miles away. So, you know, I'm working at an entirely different ballgame. I think if you ever had anything that was organized, I don't think you'd have——well, I wouldn't say 13,000 people go berserk at once,

because you're not going to get 100% from everybody, but I do think that looking along the lines of the type of facilities that you have, and I don't know the type of units and special offenders prison, I don't know. I think

[60]

you'd have some super problems.

MR. SAFRON: No further questions.

FURTHER EXAMINATION BY MR. SMITH

236 Q. I'd like to just take a minute, if you don't mind.

Does the Association have a telephone at its office?

A. Yes, sir. It does.

237 Q. Is that an outside line?

A. Yes, sir. It's an outside, private line under their National Prisoners' Reform Association; that they pay for through their outside organization.

238 Q. Do they have someone stationed there during business hours in the office?

A. Yes, sir. The hours are from 9 to 11 and 1 to 3.

239 Q. Do they have such things as typewriter and paper and that sort of thing?

A. Yes, sir. They do, yes.

240 Q. I assume they pay for their own supplies, but you provide them the office space, is that correct?

A. That's correct, yes, sir.

241 Q. In this incident, that you were telling about, on cross-examination, when the so-called Young Commission was put out of business by a group of the older prisoners,

[61]

the older prisoners, who were, I believe, you say are now charged with assault, the ones who were responsible for this?

A. Yes, sir.

242 Q. Were any of them directors or officers of the Reform Association?

A. No, sir.

243 Q. Were you able to specifically identify the Reform Association with this movement to stamp out the Youth Commission in any way?

A. The people that did it all live together in one--', the same tier, where, say, the President and Vice President live, and which is called G H & I Block.

244 Q. Beyond that, was there any connection?

A. No.

245 Q. Is the current President of the Reform Association, is he someone who is relatively a young prisoner, with a short sentence, or is he an older prisoner?

A. He's an older prisoner with a short sentence. His name is Thomas Ross, and he is a repeater, but I 've never actually--he was in Connecticut most of his time, although he's originally from Rhode Island.

246 Q. Have any of the presidents ever been really young guys, say,

[62]

people in their twenties, or any of the other officers, let me ask that; people in their twenties or teens?

A. Not the Presidents that I've dealt with. The Vice Presidents maybe, yes.

247 Q. Did I understand you to say that often, the Vice President is Black, or that they have members--

A. It's Black.

248 Q. In other words, it's usually a white President and a Black Vice President?

A. That's correct, yes.

248 Q. Well, what's the proportion of white and Black in the institution?

A. It's 20% Black here.

250 Q. Are there other ethnic groups, such as Puerto Ricans, are they represented among the officers or directors?

A. No, sir. They're not.

251 Q. You say that, of course, you go to their meetings, you listen to what they have to say, exchange ideas with them, and so forth.

Does this in any way relieve any tension or any tendencies to upset the operation of the prison that you can detect, do you find, in your opinion, that it does or does not relieve tensions?

[63]

A. Well, you know, again, to my specific situation, I think it's just, you know, for this building, is just, yes. It does, and It's just a healthy situation that they know what I'm thinking.

252 Q. I believe you said that you asked the leaders of the Reform Association to tell everybody to get out of the way; that the guards were going to come in and get those people out, no matter what.

Did they take any action in response to that request, as far as you can tell?

A. They got themselves out of the way.

253 Q. Did they advise others to do likewise, or do you know?

A. I don't know, sir, but they all can look out the windows and see what's coming, and they knew what was coming.

254 Q. Were any people that are actively identified with thy leadership of the Association, were any of them--did they stay and resist, or did they get out of the way?

A. There was no resistance.

255 Q. There was no resistance?

A. No.

256 Q. You, of course, have disclaimed any opinion as to how all of this might work down in North Carolina, because of the differences in population and geography and so forth.

[64]

Does the fact that something is called a union, for example, if your Prison Reform Assocaition were called the Prison Reform Union, would that in any way effect the way it operates, by simply its name, do you feel?

A. Yes. Maybe it's just a mental bloc that possibly I may have on thy word, "union."

257 Q. Because when you think of unions, you think of people taking concerted actions, like strikes and slow-downs?

A. Well, what I can project is going to have to be a

precedent someplace. Now, what I don't know is how many buildings you have down there. Are you going to have 10 Presidents, 10 Vice Presidents of each institution, how are they going to have meetings, how are they going to solve a problem that may be here, and there is no problem over here. I really don't know. I don't know how the hell it's going to work. I really don't know, you know, because I have no knowledge of how many facilities you have, the type that you have, if you have a special offenders prison or what. I really don't know, you know, the mechanics of this thing, you know. Somebody better do some real thinking.

268 Q. We certainly appreciate your reflections and have the benefit of your experiences.

A. Thank you very much.

[4]

DEPOSITION OF PAUL W. KEVE

BY MISS MAILMAN:

Q. Would you please state your name and occupation, sir;

A. Paul W. Keve, Director of Adult Corrections, State of Delaware.

Q. Mr. Keve, how long have you been working in the corrections field?

A. Since about 1941.

Q. In what capacities have you worked in addition to the position which you presently hold?

A. I worked as Shop Instructor in a correctional institution for the Federal Bureau of Prisons; I worked as a Probation and Parole Officer for the State of Virginia. I worked also for the State of Virginia in various capacities in juvenile corrections, both in institutional work and in–where section diagnostic services. I worked as Director of Court Services for Hennepin County, H-E-N-N-E-P-I-N, Minnesota, which is in Minneapolis where I was responsible for all adult and juvenile probation services and county institutions.

And then for four years I was Commissioner of Corrections for the State of Minnesota, administering all adult and juvenile State correctional institutions

[5]

plus most of the probation parole services. For three years I was a corrections consultant with a private corporation and then came to my present job in October, 1973.

Q. Where do you reside, Mr. Keve?

A. Newark, Delaware.

Q. Do you have any academic degrees relating to your work in penology?

A. In addition to a bachelor's degree, I have a master's degree in social work.

Q. Do you belong to any correctional organizations?

A. I belong to the American Correctional Association and

the National Council on Crime and Delinquency.

Q. Do you receive any publications from such organizations?

A. Yes. I receive their publications regularly. Plus other publications in the field that––and a great many books which I obtain from time to time.

Q. Mr. Keve, have you authored any articles in the journals published by the National Council on Crime and Delinquency and in Federal Probation, which is the journal published

[6]

by the Federal probation system.

In addition I have authored four books, all dealing with various aspects of correctional work.

Q. Mr. Keve, are you aware of the nature of the subject matter of this lawsuit?

A. I am in general aware of it, yes.

Q. What is your view in general towards the organization or the existence of inmate organizations similar to the Plaintiff organization as you understand it? Do you have an opinion?

A. Yes. I have some opinions. There are all kinds of inmate organizations and inmate organizations of one kind or another have existed for a long time, but the idea of the Union as a specific kind of organization is very, very new. And at this time has not proven itself very well one way or the other in the general field of corrections.

There have been organizational efforts made in some prisons which had some similarity and are approaching the Union idea, but the actual labor union model is very new and the experience with it so far is probably best described as very inclusive at this point.

Q. Have you made any studies of organizations

[7]

other than that based on the labor union models of inmate organizations or anything of that nature?

A. Well, I have watched this kind of development with a great deal of interest myself in my own experience in the operation of institutions both in Minnesota and here in Delaware. And then in connection with the writing of my last book, which deals with prison matters, I made a number of contacts with other correctional administrators through personal conversations, correspondence and so forth, to learn about their experiences with inmate organizations.

Q. What have been the results, if any, of your inquiry and of your experience in looking at the central organizations, formal organizations.

A. Well, I was very interested in the question of what could be the effect of the inmate organization in relation to prison management. I was looking at this question particularly in connection with the last book I was writing because I had the same concern that many prison administrators would have that an inmate organization might be subverted or captured by inmates who would be destructive in their intent and turn the organization of the inmates against the management of the prison.

[8]

It's very difficult to find examples of this sort of thing that are clearly indicative in the sense of proving anything. Indicative of what may or what will happen. Perhaps the most pertinent example I found, and which I wrote about in my last book, had to do with an organization at San Quentin Prison in California.

I considered it particularly significant because in the first place it is a large, very overcrowded prison, typical of the conventional large security prisons in the country in its physical makeup and its size. And it is a prison which would certainly have potential for destructive effect in the inmate organization if any prison would, because that prison does have a high percentage of highly militant, highly motivated prisoners, motivated to oppose the establishment if they can.

There was in that institution quite a number of inmate organizations, and with all of the troubles the institution has had, it appeared to me as well as I could determine, that the troubles did not stem from the vehicle of inmate organizations. In fact it appeared to me that the administration had shown itself capable of dealing rather artfully with the inmate organizations and helping them to use their energies

[9]

quite constructively.

Despite the fact that there was on at least one occasion an effort in the largest of these organizations to take over the organization on the part of a handful of a rather militant inmates. But it did not in fact get taken over and the

inmates themselves proved capable of stabilizing the situation and keeping it from becoming destructive.

Q. You have written a little bit and I will ask you for the record to describe about the power broker system that exists in prisons generally. Would you describe how such a system generally works in a prison?

A. I do not use that term myself. I presume you're talking about the whole business of the sharing of power between inmates and management, are you?

Q. No, sir, I am referring to the certain inmates within an institution who have greater power over other inmates.

A. Could you clarify the term and the question a little for me?

Q. I certainly will.

Convict bosses. Inmate power structure.

A. And what would you like me to comment--

[10]

Q. I would like you first to describe if you know of how that works in most prisons or whether or not it exists in most prisons.

A. I think it exists probably in all prisons but with enormous variations in degree, depending on the strength of the prison management, the knowledge, ability, expertise of the warden and his staff.

There are a lot of other factors that affect it, too. And I think you'll find in the same book that I alluded to, a description of the factors in this kind of situation which led to trouble at the Central Prison in North Carolina a few years ago, in fact. But where the prisoner power structure gains an upper hand it is likely to be according to all my observations because there is to some degree a vacuum that the prisoners are feeling, a vacuum caused by the lack of leadership ability on the part of the management.

I know one prison where the prisoner attacked another prisoner with a knife and cut him so severely that they had to take over a hundred stitches in him. And the next day the guard who had broken up the altercation and had taken the knife away from the attacking prisoner was ordered by the warden to give the knife back

[11]

to the attacking prisoner. Because in that State you had a gross political patronage system, which resulted in a warden on the job who knew nothing about prison management and didn't want to have the trouble of upsetting the prisoner power structure. And so he allowed it to continue, was allowing the prisoners to be heavily in control of the prison.

This was a problem directly attributable to simply weak, inexpert prison management.

I think that in a prison that is expertly administered, sensitively administered, you will still have the dominant inmates without any question. But instead of properly calling them convict bosses there, it would be more appropriate to call them convict leaders. They develop a degree of partnership and a constructive somewhat systematic and open partnership with the administration with basically

similar goals, rather than being in opposition to each other.

What, if any, measurable effect would you tend to think an organization such as a prisoners' rights organization or a prisoners' union would have on the existing system of prison hierarchy?

A. Well, I don't want to duck that question, but--

[12]

Q. Do you think it would have a measurable effect?

A. Yes. I would think it would have a measurable effect. The question is whether it's a good effect or a bad effect. Destructive or constructive.

And you cannot simply say that any particular type of prisoner organization will have either constructive or destructive effect. It depends very, very heavily on a complex set of factors which would have to be scrutinized in relation to the particular prison or to the potential it is developing for the convict organization. But, you see, I would say that even an organization in the form of a Dale Carnegie course or an AA weekly meeting could turn into a destructive force in a prison if the administrators handle it ineptly, unskillfully, insensitively, and so on.

On the other hand, I think that a militant union organization of inmates can turn into a constructive force if the management knows how to work with it artfully.

Q. You mentioned that you did some study into the riots in 1968 at Central Prison in North Carolina. Would you describe, if you will, the results of your investigation into that and your conclusions of the cause of that riot?

[13]

A. Well, the factors that were operating there were to a large extent situational and to some degree independent of the issue of expertise on the part of the management at the time. The prison was very old, quite crowded; there were two men to a cell and virtually no wages. There were either no wages at the time or else such low prisoner wages that they were negligible. I forget which.

Prison inmates have to have some legal tender. They have to be able to purchase certain amenities. And if the wages are not paid, then prisoners find--as we say, hustles--ways of getting money selling hobby craft objects, selling blood, selling services legitimate or otherwise. And often in prisons it's a matter of selling very illegitimate and even vicious services.

In the North Carolina Prison at that time the hustle, the most general use, was making of leather work or other craft objects for sale, not in the institutional shop, but mainly for sale through distributors to gift shops all over the State. But the situation in the prison fostered the easy possibility of quote, "convict bosses," unquote, taking over the operation, because a person could not do this craft work in his cell

[14]

because the prison was so crowded that they couldn't work in the cell. There were two men to each cell and there was no room left.

They had to work in a room elsewhere that the prison would provide and this made a shortage of space and only certain inmates could be on the list to have working space.

Wherever you have a shortage in a prison, just like in a larger society, wherever you have a shortage of something that is wanted by more people than can get it, you have the potential for bootlegging or the exploitation of the situation by persons who dominate and who can move in to control.

So at that time if a prisoner wanted to do leather work, he would have to get on a waiting list to get bench space in the workroom for it. Now, the institution management could put his name on the list, but the bosses in the cell blocks controlled the list in fact, because they had the control over the goods that went out of the prison to the outside suppliers or distributors, rather.

They could enforce their controls through various underhanded means that were illegitimate

[15]

but completely effective. And gradually the institution found that more and more of the inmates had taken over the control of that operation and through it pretty much control over a great deal of the inmate life in the institution.

Shall I go on?

Q. Yes, if you will.

A. Well, the result was that when a new Director or Commissioner, whatever he was called at the time in North Carolina, came in and attempted to get control of the institution back in the hands of the administration, the inmates resisted very energetically through the device of setting fires in progressing seriousness, and do so until the suspected instigators of this were locked up in segregation.

With the leaders out of leadership positions for that reason, secondary leaders attempted to take over but did so rather badly with the result that riots started, which resulted as I recall in the death of five inmates.

Q. Based upon your experience and exposure, Mr. Keve, how would you rate the comparative importance as a causal factor in such a situation as you have described

[16]

as between lack of any wages or the existence of any inmate organization?

A. I'm not entirely sure of your question. Could we go over that again. You're comparing--

Q. As a causal factor in a situation for a riot or in a situation for illegitimate control of the prison by inmates, which would compare the importance of the factors of lack of any inmate wages with the existence of an inmate organization or union.

A. I don't think the lack of inmate wages by itself has any great importance. The situation I was describing as it happened in North Carolina is typical of a lot of problems that develop in that it was a constellation of factors which worked in concert.

And the lack of inmate wages was one of those. There are other States that pay no wages and have not had comparable riots and other such problems. You have to have this combination of factors coming at the same place and roughly the same time.

I nevertheless I'm very much in favor of the paying of adequate inmate wages. I think that's very important, but not just for the simple reason of forestalling riots. There are larger, more important

[17]

reasons that that. But trying--so I rate that as rather relatively unimportant as a factor. But usually when you have a riot, the reasons for it is a great cumulation of unimportant factors that suddenly become of enormous importance when they are put together.

As for an inmate organization, I just don't think you can say that categorically that it is or isn't a causal factor. It can be--depending on how it's organized and how it's treated by management, it can be a stabilizing factor or it can be a destructive factor, either one.

Q. Would you say that such an organization would necessarily threaten the security of an institution or a correctional system?

A. I would say yes to your statement if you left out the word "necessarily." And I would say no to it with the word "necessarily" in there.

Q. In other words, you are saying that it could or it could not depending upon the factors you just mentioned?

A. Right.

Q. Would that same answer apply to threatening of rehabilitation programs?

A. Not necessarily at all. In fact, let me throw

[18]

this thought into it. What is rehabilitation? What I think rehabilitation is is helping a person learn to live in the kind of world we got outside the prison. And that world outside the prison includes things like labor unions. And most of our inmates that come out will go looking around for jobs and will find jobs where they have to join a union.

And I think it could be argued that if we're going to rehabilitate inmates really, we need to structure the inside of the prison and the prison life in ways that come much closer than they do now to simulation of life outside. Some day this world is going to see in its prisons a bar in the prisons; it's going to see a bank account or a branch bank in the prison with savings accounts and checking accounts, full-scale union wages paid, inmates having to apply for jobs and get them if they're qualified rather than inmates being assigned to jobs and told that they have got to work and they're going to get punished if they refuse to work.

We're going to come much closer than we have now to outside style of living which is simply surrounded by a perimeter fence that keeps people in without trying to make them live in such a grossly

[19]

distorted version of outside society.

Well, part of that old thing could be the experience of working within a labor union while in prison along with everything else that simulates outside living.

Q. What effects, if any, would you see on the ability of

prisoners and administrators to communicate by the existence of a prisoners' organization?

A. I would still have the same response. I think in the--for example, in the outside world, in a typical company with a union, management and union have to deal with each other and if they get along well, then in their regular periodic union meetings there is a regularized systematic communication between them that really gets down to brass tacks and looks at the issues. But where management resists as was very typical in the early days of unionization in this country, then the presence of an effort toward organization of the union serves the opposite purpose. It polarizes people and draws them apart and emphasizes their difference.

Q. What effect would you distinguish between an administrative sanctioning of a prisoners' organization versus the administrative banning of such an organization?

[20]

What is the difference and effect ot those two approaches?

A. Well, I think that is probably the kind of crux of the issue. My own view is that we've got to approach the operation of the correctional systems with a broad and long-term perspective. And my own perspective is that sooner or later inmate organizations are coming, whether you call it a union or something else that simulates it or is in some way similar.

We do not have a choice between having a union or not having a union. Our choice is only between whether we have the union this year or some other year. I think the effort of any State system to oppose it, aggressively with determination may possibly stop it, but if so, will stop it only

temporarily.

It may just as possibly have the effect of hardening the determination of the inmate body to proceed with it and so make the transition to the presence of a union more stressful, more damaging and so on. Whereas it could be allowed to come more easily and be more constructive.

Whether it will go that way or not would depend what at the moment is the makeup of your prisoner leadership. It might depend on something so

[21]

specific as whether a certain perisoner is in the institution right now or not. The one that has the leadership, spark and the ability to grasp the moment and exercise the leadership over the inmate body.

Q. If an inmate organization provided a means for an electoral structure and democratic participation such as voting on officers or policies, do you feel that it would serve any rehabilitative purpose?

A. I would say that it would work more in that direction than the other. I might background that with this experience of mine. I happen to belong to the Presbyterian Church and about two years--about three years ago was involved in a National Presbyterian Committee working on the development of a statement for--as a position statement of the National Presbyterian Church body and in the area of crime, law enforcement, corrections and so on.

And in that connection I appeared at the National meeting in Denver that year to help push that statement through. One of the points in the position we drew up and

which was agreed to by the majority, strong majority, of the large committee that was working on it, was that we would--we called for the change of laws

[22]

throughout this country to permit prisoners to vote.

Now what we were talking about was voting in ordinary state, local and national elections. And this part of the position was not just my idea but I was one of those who was strongly urging this position, because I felt that the refusal of the voting rights to prisoners was a relic of a day when we took a kind of instinctive punitive approach toward convicted persons. It had no rationale of any utility to support it. And I felt that this approach was a valid one. That crime generally can be described as a function of irresponsibility. And what we have to do to change people into law-abiding people is to help them to learn to be responsible to put it too simply but in very basic terms.

And a person learns to be responsible by carrying responsibility, and usually the prison works against the rehabilitative ideal by removing from the prisoner the opportunity to exercise responsibility. Of these various opportunities voting could be construed as one. I have no illusion whatever that by giving the prisoners the vote that we are in doing so making a substantial contribution towards straightening them out into law-abiding citizens.

[23]

I simply mean that if we are really going to accomplish greater rehabilitative effect, we've got to do that and many, many other little things in the way of giving them the opportunity to exercise responsibility. So I strongly

approve of the idea of prisoners voting. That background deals with governmental elections outside. I would urge that they have the right to vote in, but I would extend it with the same rationale to the opportunity to vote on matters inside the prison. And I would mention, too, that in our main prison here in Delaware we have a prisoner organization that is representative of--well, it is a small body of about nine or ten prisoners, but it represents the prisoner population.

And those prisoners who are members of it become members by vote of their fellow inmates in the buildings that they are in. I certainly would not claim that we have rehabilitated anybody through that device at all, but I think it is a sound, appropriate and workable way to do.

Q. Has the existence of this--what do you call this, council--

A. It's called Prisoner Action Committee.

For short it's called P A C.

[24]

Q. Has the existence of this committee in any way endangered the security of the prison in your opinion? Or of the Delaware correction system?

A. It has not endangered it. It has been in existence for probably a little more than three years.

I think most of the staff at the prison would tell you that it has been no problem and there have been times when it has helped materially to stabilize the prisoner situation in the institution.

MISS MAILMAN: Thank you, sir. I do not believe I have any more questions at this time.

BY MR. SAFRON:

Q. Mr. Keve, I will try to keep my questions pertinent to the issue. Since we waived objections, these depositions have been wide-ranging and well beyond the proper scope of these depositions.

Would it be fair to state that not all of your views on penology are accepted by your fellow correctional officials?

A. That would be quite fair.

Q. In fact would it not be fair to state that you

are probably considered quite a maverick by your peers in this field?

A. I've been called many names, and maverick has not been one of them that I've heard, but some would, yes.

Q. Isn't is also fair to state that there have been some quite outstanding individuals who have recently spoken to the fact that rehabilitation is in fact a failure?

A. Oh, yes, including myself.

Q. Are you aware that the North Carolina correctional system has a daily population of some thirteen thousand

inmates?

A. I would not have been able to quote the figure, but that's about what I would have expected.

Q. Are you aware that the North Carolina correctional system has some seventy-seven units spread across the State?

A. Yes, I am. I've been well acquainted with that.

Q. Are you aware of the fact that there are some four hundred and seventy miles separating the units furthest east and furthest west?

A. I'm not surpirsed at that.

Q. How many units are there here in Delaware?s,

A. We--organizationally three.

Q. Are they located at the same location?

A. They're located--there's a distance of about, oh, eighty, nearly ninety miles between the two that are the farthest apart.

Q. And what is the total inmate population in Delaware?

A. Not quite eight hundred.

Q. And does that also include your people who have been recently arrested and are held in custody awaiting trial?

A. It includes everbody in prison, all adults in prison in

Delaware for any reason.

Q. That would include everyone who had just been arrested by a State Trooper or a local policeman?

A. Even the overnight jail prisoner.

Q. What in fact is your felon population?

A. I don't have that figure in my head. I would have to give you an approximation of it. I would expect that it would be not much more than three hundred.

Q. Are they all in one unit or in separated units?

A. Organizationally they are in three, but one of those has two widely separated parts, so that they are

in terms of geographical or physical separations, they are in four places.

Q. Do you have an official separate State agency here in the nature of a grievance commission or a State ombudsman?

A. No.

Q. In discussing unions and the relationship of prisons to unions are you aware that the State of North Carolina has an open shop law?

A. No, I'm not acquainted with that fact.

Q. Are you aware that the State of North Carolina State law prohibits State officials from negotiating with unions of State employees?

A. No, I'm not acquainted with that law.

Q. Are you aware of the percentage of unionization in the State of North Carolina?

A. No.

Q. So that your opinions vis-a-vis unions are not necessarily applicable to the State of North Carolina?

A. The opinions I am stating are intended to be taken as statement of basic principles rather than related to any one State in specific terms.

Q. Isn't it correct that, I believe on page 155 of

your book, that you state whether or not a prisoner organization is to be recognized is in fact a management choice of the management of the institution?

Starting fifth line from the bottom.

A. I see the sentence you are talking about, but how did you phrase that again?

Q. Isn't it a management choice, in other words, a responsibility of the management of the institution to determine whether or not they will in fact permit inmate organizations?

A. This sentence refers to an inmate council and in effect I think you're right that what I'm saying here is that it's consistent with what I said a few minutes ago here that this sort of thing depends or the success of the inmate organization depends on the skill, knowledge and expertise of the management.

The particular sentence here says that, "If any warden truly does not believe in the inmate council and would be uncomfortable working with one, it is probably well for him not to try it."

Q. Would it not be fair to say that that is then a management function, whether or not to recognize an inmate council?

[29]

A. Yes, it is, except that the choice still is going to be very limited. And I think in any State or any prison if the warden cannot work with it and refuses to, some other warden who comes along after him is going to have to pick up the pieces and deal with it.

Q. Mr. Keve, you keep referring to warden. Now, we are not talking about one institution. We are in this situation talking about a concerted group of inmates in seventy-seven institutions completely across the State of North Carolina.

Does that change your opinion when you have inmates in seventy-seven institutions trying to unit into one group rather than inmates in one institution?

A. No. It doesn't change my opinion. And I am not really certain what the dynamics are that you are seeing there. Very certainly that will complicate it. There is no question about it.

Q. If there is concerted action between inmates at a predetermined time in seventy-seven different units across the State, would that not raise security problems that are almost insurmountable? That in fact it would require calling out the

National Guard or the Army to repel such a disturbance?

[30]

A. That is always possible. I think I see what you are saying.

At the present time if trouble comes it's more likely to come in an individual situation where you can handle it, rather than in a total situation. That is a very real danger, but I would go back to my statement that it probably is going to come some time anyway. And it may mean that any institution or system where it occurs is going to have to make some substantial changes, but it's only a question of whether it makes those changes and does that this year or in some other year. That's the way I see it.

Q. Mr. Keve, did you go down to Raleigh, North Carolina to investigate the causes of the riot at Central Prison on April 18, 1968?

A. Are you giving that date as--

Q. That's the date where people died.

A. I didn't go--if you're asking if I went on that date, no, I didn't.

Q. Did you go on some subsequent date?

A. Oh, yes. I have had conversations with--subsequent to it, with both George Randal and Lee Bounds (sic), and later I went to Raleigh and talked with Lee Bounds

[31]

about the riot. Still later I wrote the material on it and then submitted it to him for review to be sure that I was correct in details.

Q. Did you read Mr. Bounds' report to the Governor subsequent to that riot?

A. No, I did not.

Q. You are aware that that riot occurred when Mr. Bounds was attempting to regain control from the so-called "bulls of the yard." The prison bosses, are you not?

A. Yes.

Q. And that a very sophisticated business had been developed by a few individuals at Central Prison?

A. Right.

Q. And that when Mr. Bounds attempted to take away an extremely profitable business from the individuals, they completely took control over the inmate population and resulted in a riot?

A. Right.

Q. Is this not an example of what can happen when certain prisoners gain power in a penal institution?

A. Yes, it is an excellent example of that.

Q. And their power was for personal aggrandizement rather than the good of the institution?

[32]

A. That is right.

Q. In preparing your material, did you have the opportunity to speak to Mr. Mullens who is the warden of the Rhode Island State Penitentiary?

A. No, I have not.

Q. Are you aware that up in Rhode Island by a Federal Court Order back in 1972 they were required to accept a prisoners' organization?

A. Yes, I recall that, but I'm not acquainted with that situation in detail.

Q. If I were to tell you that Mr. Mullens told us in a previous deposition that due to a power struggle between younger inmates and the older inmates, that the members of the Youth Committee were all stabbed one evening within a period of five minutes, would you believe that?

A. I would be willing to believe it.

MISS MAILMAN: Are we registering continuing objections to these questions?

MR. SAFRON: Same as I had to your direct.

MISS MAILMAN: Thank you.

[33]

BY MR. SAFRON:

Q. Now, is that not a possibility in a power struggle for

leadership that there will in fact be violence, violence between the younger and older inmates?

A. Yes, it's a possibility. Anything is a possibility in prison, but you reduce the possibility by establishing a system that is agreed upon between the institution and inmates.

And in the situations that you are talking about, that factor was entirely lacking as far as I would assume, anyway, of an agreed upon system for the establishment of leadership and the recognition of leadership between the two.

Q. Even though they do in fact have a free vote, or at least I'm advised they do, in the Rhode Island State Penitentiary?

A. Well, I'm not competent to comment in any--with any specificity about the Rhode Island situation.

Q. Are you aware of any models which are State-wide as far as prisoner groups besides this group here in Delaware?

A. No.

Q. Are you aware that just last week in North

[34]

Carolina at our Womens Correctional Center we had considerable rioting?

A. I read of it in the newspaper.

Q. And that was as a result of demands being made by inmates?

A. Well, it wouldn't surprise me.

Q. And it required calling out the State Police and the National Guard. What is your opinion concerning demands made by inmates? Do you respond to unnegotiable demands?

A. Oh, yes. And I think they have to be discussed and in fact in our own situation we do discuss them at considerable lengths with our prisoner organization.

Q. You say "discuss." I say they use the word "demand." If they demand, if you are faced with a demand, what is your response to a demand?

A. A response to a demand would be to grant it if it's a feasible thing to grant and if it is not, then the response would be to discuss very fully, openly with the inmates the reasons why it is not possible to grant it.

Q. Do you deal with inmates once they get out of hand? In other words, will you respond to demands by rioting

[35]

inmates, by inmates who are involved in disturbances?

A. Well, that's a problem that has plagued our prisons and police and national governments, and we have no more of a perfect answer to it than any of those other bodies have ever developed.

When the occasion arises you have to decide then on the basis of what cards are held by both sides.

Q. But in the context of say a prisoners' labor union which would then be making demands upon the State. I am

not talking at this moment in terms of a riot, but say demands are being made by this prisoners' labor union; how would you respond to their demands?

A. Only in the way that I have described.

Now, you have mentioned State law which controls and prohibits certain things. And North Carolina and anybody else has got to work within the State law that they've got. But this is also true of labor and management relationships in the outside world. And if the labor-management situation in the world in general is out of balance in some way, there's pressure to get the law changed, but until it's changed, you have to work within it.

[36]

Q. Hasn't it been your experience that there are certain inmates who attempt to obtain status within the penal system?

A. It is my experience that there are, and that also other inmates invariably who exercise the stabilizing force and if the management will join the problem instead of bucking it, it can exploit the more stabilizing influences among the inmates. And I am satisfied that that's what happens, because there are only a few inmates usually in an institution who really want to destroy the situation they are in. Most of them would like to get some relief from the irritations of the day, but would rather cool it and not drastically jeopardize the situation they're in.

Q. Have you had any experience with a prisoners' labor union yourself?

A. No. And very, very few people in corrections have. That's why I said earlier that the findings in regarding them are extremely inconclusive at this point.

Q. Would you feel that any experience you might have had with your Prisoners Action Committee here in Delaware would be equally applicable to the dynamics of the situation in North Carolina?

A. Not equally. I don't know of any prison

[37]

experience anywhere that would be equally applicable.

MR. SAFRON: I have no further questions.

MISS MAILMAN: I have a few questions for redirect.

BY MISS MAILMAN:

Q. Mr. Keve, when you were Commissioner of Corrections in the State of Minnesota, do you have any recollection of what was the approximate inmate population of the Minnesota Corrections Department at that time?

A. The adult prisoners would have been about not quite two thousand.

Q. How many prison units did you administer in that State or were under the umbrella of the administrators?

A. In addition to the field services operated nine--well, there were ten institutions when I became Commissioner. We

closed one of of them when I was there so there were nine but that includes adult and juvenile. There were two major prisons. One institution for women and one forestry camp that was for young adults.

Q. Earlier under examination by Mr. Safron, you were asked whether or not there were those who would say rehabilitation was a failure. My recollection is that

[38]

you answered yes, including yourself. Would you elaborate on that, if you will?

A. Well, the public isn't sure what they want us to do. They want us to punish; they want us to rehabilitate; they want us to protect society, various things like this. And I think generally in corrections we pay lip service to the idea of rehabilitation. But we accomplish extremely little in a typical prison, and when we say our interest is rehabilitation, and when we accomplish so little, we're being a bit phoney and working against our own interests.

You will note in my book I propose a very drastic change in the sentencing procedures, one which will never come about, I presume, not in my life-time anyway, but anyway, it illustrates the concept I have that for many people who get locked up, we should have a straight out-and-out punishment sentence with no pretense that the person has to be subjected to any so-called rehabilitation programs.

But there's this catch to it. That in fact with a short punishment sentence where the time certain set by the judge where he gets out on a date certain whether he has behaved

or not behaved, improved

[39]

or not improved, he knows he is coming out that date. Then he no longer has to simulate improvement in order to look good to a parole board, and then in fact you can put helping programs--a word I would like better than rehabilitation--you can put helping programs in the institution and make them available to him. Then your programs have got the real effective dynamic and so on because he doesn't have to take advantage of them.

And then also when he does get involved in such a program, you will know that his reasons are real because he doesn't have to. And I think then when we move to the idea of calling it what it is, straight out-and-out punishment, we will in fact have the opportunity to make more rehabilitative effect than we have now.

Q. Mr. Keve, Mr. Safron asked you several questions concerning a demand situation. I think there may or may not have been an obscure reference to the recent disturbance at Womens Correction Center in Raleigh. I have two questions in regard to that questioning by Mr. Safron.

One, other than what you may have read in the paper, are you personally familiar with anything about the situation in Womens Prison which Mr. Safron

[40]

made reference to?

A. Oh, I shouldn't really claim acquaintance. I used to know Mrs. McCubbin (sic). I visited the institution and been

all through it, but that is not recent, so I--

Q. Do you personally have knowledge as to the causes of the disturbance?

A. No, none whatever.

Q. Do you have an opinion as to ways in which a demand situation, hypothetical situation such as Mr. Safron proposed to you in your position as administrator, could be avoided?

A. Well, if the law permits unionization, it will also define what is possible under that. And I think the same kinds of things can happen, should happen, as happens in union-management situations outside.

I think what we're worried about here is not really bonafide union situations of negotiations, of demands. What we're really fearful of is the subversion of this. The day when a union ceases to be a union and becomes a mob following the unprincipled union leadership which may have deserted the union model and become a mob model, if I can put it that way. But as

[41]

long as it functions as a union, I don't see a problem.

What happens outside if union members make demands which management cannot meet? I would say you ask yourself that question, then apply it in the institution. If you do not have the budget to meet the demand, you can't meet the demand. So what does the inmate group do? They go on strike, so let them sit down, but if they start a riot, you see, then we're no longer talking about a union situation. Then we're just talking about a plain old prison riot and we have these anyway.

Q. Would you consider the input from your PAC

Committee, would you consider that as a collective bargaining type of situation?

A. Oh, I again would just ask what would be the law on this in any particular State where you are facing the issue. If you're talking about collective bargaining in regard to say inmate wages, for instance, I'd be perfectly willing for our inmate body to engage in bargaining with us about inmate wages.

I would have to tell them, you know, look, fellows, I've got only what the legislature gave me. And so I'm limited by that, but we could talk about it within those limits and we can carry your requests to

[42]

the next session of the legislature and in fact we'd be glad to engineer some confrontation between you and the Chairman of the Finance Committee or whatever is appropriate, and see what can be worked out.

There simply would be no way and the inmates would have to recognize the fact that there is no way that they can make a demand and have it responded to on those terms where laws and budgets don't permit an administration.

Q. By "confrontation" are you talking about--define that if you will.

A. I'm sitting down across the table and talking about it.

Q. Okay.

Would you consider dealing with inmate requests that were not about wages, but were about other prison conditions, collective bargaining? Mail regulations or anything of that nature?

A. I don't know whether the word "collective bargaining" fits that. That's a kind of a technicality. The more important thing is that I would consider them very legitimate. We do in fact do this sort of thing here.

[43]

A current example is right now we are revising the policy as to eligibility for work release and the procedures for the use of work release throughout our institutions. We simply will probably will not put the final policy into effect unless we can get acceptance of it by the PAC group. They are involved in the discussions and very, very actively.

Q. Would you grant a demand if you felt it was clearly not legitimate?

A. No. I wouldn't. I wouldn't, because we would always have to say to the prisoner group just as you do in a group therapy situation. You have to say we reserve the right to make the final decisions according to the requirements placed upon us by law, and the responsibility we have for management of the institution. But just as far as we can go within those limits, we will negotiate with you and arrive if at all possible jointly agreed upon positions.

Q. Do you see any necessary conflict between the reserving the right of final decision and between having open communication and negotiations?

A. No. I don't see any. I think that--to be very honest about it, the coming of a union in any

[44]

institution anywhere is going to be stressful.

I would not argue that you can just start a union and let

a union start in your institution and the next day and the next year everything is still going to be all smooth and serene. I think it's going to be stressful, but every major departure from the conventional and the tried and true and all of that brings stress and strain.

The fascinating thing to me is that over the nearly thirty-five years now that I've been in the business, I have seen remarkable changes come about. And I'm sure that probably in every prison in the country there are a few people around that have been working there for years, twenty years or so, who are doing things today, following procedures today and practices with equanimity and serenity that they would not have believed possible when they started work there.

I remember when I first heard a man in a juvenile training school say we're thinking of stopping the censorship of mail, and it was a breath-taking position to take at that time, and it's not too many years ago.

Here's an institution full of little boys

[45]

and I've worked in one myself years ago, and it was just taken for granted that you have to censor every letter coming in and going out. And up to ten years ago most institutions would have taken this for granted. About four or five years ago when I first proposed to my wardens in the Minnesota prisons that we think about backing off from our strict censorship of every letter going in and out, I shook them up considerably. They couldn't take it and we had to go very slow on that, because they just did not grasp the idea at that point that you can operate a prison without censoring every piece that goes in or out.

And now there's thousands of prison people who ten years ago wouldn't believe that you could operate without

censorship and are operating every day with no censorship and have forgotten that a few years ago they couldn't have believed it. There are all kinds of changes of this sort that are coming very, very rapidly.

And I think there's very little difference between some of those things and the business of prisoner organizations. I would just predict that in another twenty years we will look back at it and say what was all the shouting about?

[46]

Q. If I may ask one final question: With regard to your earlier testimony and Mr. Safron's question to you about the choice to accept or not to accept an organization or any change in your management decision, have you considered in, and have you on page 118 of your book, considered the perspective of changes coming to a prison administration through court order and by virtue of litigation?

A. Yes. I don't remember the page but I do recall very well. The court order thing is very interesting in this business.

A person in my kind of position, Corrections Administrator, may have rather different feelings about different kinds of court actions. They can be a great nuisance at the time. They can cause considerable stress and strain in the course of putting them into effect and changing over. But generally they serve a very useful purpose.

They may many times speed up change that needs to come. Sometimes and I've been in this position myself, the administrator may almost covetly welcome a suit against himself in terms of some of the procedures he's following, because it's entirely possible

[47]

for me to recognize that I have a condition in my insitutions

that needs to be changed. But neither I nor warden under me can simply issue orders for change and just have it to be done as simply as that, because you have tremendous resistence on the part of staff who have to get used to change and do so very, very--well, slowly.

And sometimes, you see, I would welcome a court suit on something and having the court tell me, hey, you've got to do so and so now. And in this way the change comes and I do not have the problem of losing the--let's say, the respect, the support, et cetera, of some of my staff. I can say to them, look, fellows, the court tell us we got to do it, so okay, we got to do it.

And so what I wanted to happen is happening and somebody else has made it possible for it to happen. So I think the court action sometimes would be very useful.

I can think of some other thoughts about it, too, but there are all sorts of things that happen.

Q. Do you think that an administrator can adjust even if he did not covetly hope for the action?

A. Some can and some can't. There are some who--you just have to wait for them to retire. And like I

[48]

said in the book, that passage Mr. Safron pointed out, there are times when under a certain administrator of whether the court orders something or not, it isn't going to happen.

I think you would find it very interesting to read, for instance, an account of Louisiana Prison or of Angola or extremely severe beatings of inmates went on for years and years. The Governor issued an order, it's got to stop. There will be no use of strap. This is a Governor's order directed to the warden and that was supported to settle it.

Some investigators went back in the prison about two years later and found it had never stopped. They're out there on one remote corner of the State on a sugar cane plantation. Their reaction was, who is the Governor and what's he got to do with it? And they went right on whipping people.

It's very, very difficult to change unless the warden really wants to change and unless the deputy warden wants to change and believes in it and understands it. So sometimes what you got to do is change a few people at the head.

Q. May I, if it's possible, attach a copy of this

[49]

book to the record, and I will ask you to identify it.

MISS MAILMAN: Off the record.

(Discussion off the record.)

MISS MAILMAN: I'm finished.

BY MR. SAFRON:

Q. Mr. Keve, using the labor union as a model, what occurs once negotiations ceases between management and the representative of the union?

A. What occurs once the negotiations ceases?

Q. Yes.

You then have strikes, sit-downs, picket lines, things of that nature.

A. Does your question assume that it ceases with disagreement?

Q. With disagreement that there is no agreement.

A. I can answer that question only in terms of what my approach would be if I were the administrator. I would have to say there's this disagreement. I would have to define it and I would have to state the reasons for it with complete candor--with candor and completeness, I would say. And lay out the next steps.

Q. Mr. Keve, I am assuming the good faith of the

[50]

management and you have a disagreement and using the labor union model, would not be the next step on the part of the union be either strike, sit-down, picket, something of that nature?

A. Yes, probably so.

Q. And if you--

A. And that in itself doesn't worry me.

Q. In a penal institution, is that not insurrection?

A. No. It would not be if it's according to law.

Q. You are assuming then that inmates have a right to strike according to law?

A. I could answer that only in terms of any one State and its law.

Q. But you are assuming then that inmates in fact have a right to concerted action, are you not?

A. I would say that the law should give them the right. As long as it's non-violent and in accord, again, with the

outside union model.

Q. In other words, you are of the personal opinion that concerted action should be permitted inmates?

A. Yes, as long as it's nondestructive. You see, I would say they should have the same rights and be held of the same responsibilities as outside. And in outside

[51]

job actions sometimes turn into violence. And then the persons who become violent may be brought into court, charged, convicted, et cetera. The the prison should have the same right for non-violent concerted action. They exercise it anyway.

Walpole Prison in Massachusetts for nearly a year had a work stoppage, essentially an anarchy. There was no union there. It was happening anyway. Now, if there had been a union, and it had been handled according to the systematic structure of the union model, the strike would have been less destructive probably than it was, because that strike was accompanied by some rather messy kinds of things. It didn't get seriously violent, but it was terribly destructive of both inmate and staff morale.

I think that if it had occurred in the context of union operation, that all the union rules followed, it would have been a far shorter strike, less damaging in every way.

About a month ago the New Jersey State Prison at Leesburg had a work stoppage for one day. Again, it's not a union, but they had a work stoppage to protest change in furlough practices. And the

[52]

superintendent sat down and negotiated, talked with them, and resolved their feelings about it and they went back to work.

I think prisoners should have the right to do this and that's one of the ways for them to learn responsibility. Again I say, once you make the change, if you ever do in North Carolina, I'll be glad I'm not the administrator and I'll be glad if it doesn't happen to me while I'm the administrator, but if it does, I'm not going to buck it. I'm going to work along with it and recognize that there may be hell to pay for it this year while we're getting used to it, but it's going to come some day anyway and it's just a matter of whether my generation catches it or the next one.

MR. SAFRON: I have no further questions.

(Witness excused.)

(Whereupon the deposition was concluded.)

AFFIDAVIT OF DAVID L. JONES

I, David L. Jones, first being sworn, depose and say:

That I was appointed on January 5, 1973, as the Secretary of the Department of Social Rehabilitation and Control. On July 1, 1974, the name of the Department was changed to Department of Correction by the terms of the Executive Organization Act of 1973, codified in Chapter 143B of the General Statutes of North Carolina.

Sometime in the latter part of 1974, I was advised that there was in process an attempt to organize the inmates in the custody of the Department of Correction into a statewide Inmate Prisoner Labor Union. I immediately directed the staff of the Division of Prisons to monitor the course of the union

and to keep me advised as to its activities. I directed my Senior Administrative Assistant, James Peeler Smith, whose duty is among other things to maintain liaison and coordination with the Attorney General's Office, to determine what rights an inmate union may have. I did not intervene directly in any of the day-to-day dealings with inmates or other persons purporting to be representatives of the union. I am not familiar with any of the particular matters regarding any mail to or from any inmate being inspected, censored, or refused. I did direct my staff though that unless I was legally required by a court of law that I would not recognize the existence of any inmate union and neither I nor anyone else in the employment of the Department of Correction would recognize, negotiate with, or do anything else to create the impression that the so-called union was a recognized legitimate inmate activity. I directed that existing departmental policy would be enforced and complied with.

It is my belief that the responsibility for administering the prison system lies with the Secretary of Correction and persons under his supervision. I also recognize the existence of the North Carolina statute forbidding State agencies to negotiate with unions. Although this act might not specifically pertain to inmate unions, I believe that the spirit of that law does cover this situation. Furthermore, since the day I became Secretary of this Department, I have kept an open line of communication with inmates. I have spoken to inmates personally and discussed their problems with them. I have directed my immediate staff to respond to every complaint submitted to me by an inmate and provide the inmate with a response. Whenever any inmate made what appeared to be a legitimate complaint, either I directly or a member of my staff has taken corrective action. When the Inmate Grievance Commission came into existence on July 1, 1974, I directed that the employees of the Department of Correction to cooperate with the Inmate Grievance Commission in order that that agency might be an effective and meaningful means of resolving inmate grievances. I authorized the establishment of an internal grievance procedure within the Division of

Prisons. Thus, I believe I have made every effort in keeping the lines of communication open to my office and insure that persons in the custody of the Department of Correction would always have access to a means of airing their complaints. Because I believe that inmates have an effective means of channeling their grievances, I have refused to recognize the so-called North Carolina Prisoners' Labor Union.

The existence of a union of inmates can create a divisive element within the inmate population. In a time when the units are already seriously overcrowded, such an element could aggravate already tense conditions. The purpose of the union may well be worthwhile projects. But it is evident that the inmate organizers could, if recognized as spokeman for all inmates, make themselves to be power figures among the inmates. If the union is successful, these inmates would be in a position to misuse their influence. After the inmate union has become established, there would probably be nothing this Department could do to terminate its existence, even if its activities became overtly subversive to the functioning of the Department. Work stoppages and mutinies are easily foreseeable. Riots and chaos would almost inevitably result. Thus, even if the purposes of the union are as stated in the complaint, the potential for a dangerous situation exists, a situation which could not be brought under control. Thus, my responsibilities to the people of North Carolina, to the employees of the Department of Correction, and to the inmates themselves necessitate that this Department refuse to recognize legitimacy of the union. As stated above, until the legal position of the Department could be fully evaluated, I did not want to do anything to create the impression that the union was a recognized legitimate spokeman for the inmates.

On or about March 5, 1975, I discussed with my staff and with Mr. Jack Safron of the Attorney General's Office what position the Department of Correction should take in regard to the union. Two departmental statements had been drafted for my signature. One dealt with inmate unions and the other with the right of law students or paralegal assistants

to interview inmates. These policies were formally promulgated on March 26, 1975. They represent the written declaration of the Department's policy and are not, to my knowledge, inconsistent with the policy maintained by the Department prior to their promulgation.

In regard to the policy dealing with inmate unions, the following points should be noted: (1) the Inmate Grievance Procedures is recognized as the only formally authorized method of handling inmate grievances; (2) Departmental employees are prohibited from negotiating with any inmate union and that no person purporting to be an employee of the Department can enter upon Departmental property for the purpose of organizing an inmate union; (3) any person who enters the premises of the Department of Correction under a supposedly legitimate purpose but actually for the purpose of organizing an inmate union shall be permanently prohibited from entering Departmental property; (4) no employee may authorize the use of Departmental property for an inmate union or negotiate with any representative of such a union; and (5) inmates of the Department of Correction are prohibited from soliciting other inmates to join the union and may not use the mails for this purpose and that any attempt to use the mail will result in the non-delivery of correspondence violating this regulation. Any decision to withhold a letter would require compliance with other applicable departmental regulations.

The policy regarding paralegal assistants and law students working with lawyers and legal aid societies recognizes the constitutional right of attorneys to interview and correspond with their inmate-clients. This regulation was established not to impede the attorney-client relationship, but rather to protect it. The policy simply requires (1) that the Warden or Unit Superintendent to be notified of a pending visit by a paralegal assistant or law student, (2) that the inmate to be visited be identified, and (3) that the attorney certify that the paralegal assistant or law student is in fact acting on a legal matter which is now or may be pending before the courts.

The policy is designed to make it as convenient to the attorney as possible. It protects the Department from any abuse of the privilege and makes the attorney responsible for his representatives. It would also enable the attorney to know if his agent was acting improperly.

Copies of the two policies are attached hereto and incorporated by reference.

This the 8 day of April, 1975.

/s/ Affiant –David L. Jones

AFFIDAVIT OF RALPH D. EDWARDS

I, Ralph D. Edwards, first being sworn, depose and say:

That I am and was at all times mentioned in the above style complaint the Director of Prisons in the North Carolina Department of Correction. In my capacity as such I am responsible for the day-to-day operations of the North Carolina Prisons system and for executing and implementing policy established by the Department. I am immediately responsible to Mr. David L. Jones, Secretary of the Department of Correction.

Some time during the later part of 1974, I was advised by employees of the Division of Prisons that certain inmates and outsiders were attempting to reestablish an inmate union within the prison system. There had been an earlier effort to establish a union which had been unsuccessful. I was advised that Ms. Deborah Mailman, a Raleigh attorney, had requested permission for two persons, Ms. Robbie Purner and Mr. Chuck Eppinette, whom she described as her paralegal assistants to be permitted to visit her inmate-clients in the prison system. I was also notified by departmental employees that Ms. Purner and Mr. Eppinette were known inmate union organizers. I immediately consulted with Mr. James Peeler Smith and Mr. Jack Safron in regard to the prison system's duty to admit

such persons. I was asvised that as the persons were represented by Ms. Mailman to be her *bona fide* paralegal associates, they should be permitted to visit persons identified as Ms. Mailman's clients. I was advised that we should accept Ms. Mailman's word that these persons were in fact to act in her behalf as her agents in dealing with her inmate-clients on matters for which she had been retained in pending or potential court actions. These persons were represented as Ms. Mailman's agents acting on her behalf as an attorney. They were not represented to be acting on behalf of the union or on the behalf of Ms. Mailman as attorney for the union. I was therefore advised that the Department should accept Ms. Mailman's word as an attorney that these were in fact her agents and that unless it were determined that the representation of these persons as paralegal assistants was in fact a coverup for the use in organizing the inmate union, they should be permitted access to those persons Ms. Mailman described as her clients. I directed Mr. Smith to inform Ms. Mailman that her paralegal assistants would be permitted to interview her clients on her behalf and to advise her under what conditions this should be done.

In the period of time that followed these things were brought to my attention: (1) Ms. Purner and Mr. Eppinette identified themselves in the North Carolina Prisoner Labor Union Newsletter as union organizers, (2) Ms. Mailman identified herself as attorney for the union, (3) those persons who Ms. Purner and Mr. Epinette subsequently visited were almost exclusively inmates prominent in the union, (4) and that Ms. Purner had attempted to bring inmate union organizing material into Central Prison. After consultation with Mr. Smith and Mr. Jack Safron, it was concluded that the Department was fully justified in believing that Ms. Purner and Mr. Epinette had misused the authority as paralegal assistants and were in fact actively engaged in organizing a union within the prison system. I therefore authorized Mr. Smith to terminate their visiting privileges.

The complaint charges that the inmate labor union is denied equal protection of the laws in that the Junior

Chamber of Commerce and Alcoholics Anonymous are permitted to operate within the prison system. I should first point out that these are the only two private organizations which are allowed to function in the North Carolina prison system. They are permitted to operate because they have been found to demonstrate legitimate rehabilitative purposes and to fill the needs of the inmates. They both operate under specific guidelines and their activities are regulated.

Local Jaycee Chapters have been allowed into and encouraged within the North Carolina Prison System under specific conditions relative to their stated purposes of the productive association of their members, the accomplishment of community projects, and their *bona fide* relationship to parent chapters comprised of stable citizens capable of having a rehabilitative impact on confined members. Attached hereto and incorporated by reference is an inter-staff memorandum signed by myself, and dated October 21, 1974, in regard to institutional Jaycee Chapters. This memorandum stipulated the conditions under which Jaycee Chapters may exist and the projects which may be developed by the organization. In summary, the right of the Jaycee organization to exist is contingent upon its effective accomplishment of tasks which are predefined by the Division of Prisons. At such time as the objectives of the organization (namely, productive association with stable community representatives and the accomplishment of service projects to the community), should cease, the functions of the organization and its opportunities to assemble as an organization would also cease. Also attached hereto and incorporated by reference is copy of my letter to Mr. Gus Tulloss and a list of approved Jaycee projects. The letter sets forth the position of thy Division of Prisons in regard to Jaycee projects.

The goal of the Alcoholics Anonymous Program is also adapted from the program structure of an organization

outside the confines of the prison system. The objectives of the Alcoholics Anonymous Program are to provide therapeutic support, insight, and an opportunity for productive sharing of experiences among those who have encountered the deteriorative effects of alcoholism. Alcoholics Anonymous is structured on a peer pressure basis which begins while the individual client is confined and is intended to have carry over effects into Alcoholic Anonymous groups in the free community.

Prior to the development of Alcoholics Anonymous Programs, it was necessary that the design of the program and the intended goals were justifiable within the confinement facilities of this State. The goals and the objectives of the Alcoholics Anonymous and the Jaycee Program were presented to correctional staff as meaningful courses of action with positive goals relative to the productive restoration of offenders to active, lawful participation in the community. The goals of both organizations was scrutinized, evaluated, and approved. Operational guidelines have been drawn up in each instance following approval to certify that the primary objective of the correctional system--to maintain order and security--would not be abridged by the operation of these programs within the confines of prison units.

In evaluating the potential impact of a prisoner's union, a reasonable distinction was drawn in evaluating its purpose as a separate body composed only of inmates with the intention of shaping administrative policy. The Division of Prisons was unable to validate a substantive rehabilitation purpose or associative purpose in the design of the organization. To accept the organizational objectives of a prisoner's union would be to approve an organization whose design and purpose would compromise the order and security of the correctional system.

Moreover, these goals which the union purports to have adopted may be accomplished through channels established within the Department. First, the Division of Prisons has established an inmate grievance procedure by which inmates may make their complaints known and have these complaints acted upon. When an inmate files a complaint with the Inmate Grievance Commission, the complaint is simultaneously submitted to the unit grievance procedure. The unit at which the inmate is housed must respond to the complaint within a specified period. If the inmate is not satisfied with the complaint he may then appeal to the area or institutional level. Once again, action must be taken upon the complaint. If the inmate is not then satisfied an appeal is immediately processed with the Inmate Grievance Commission, which shall take whatever action it deems appropriate. The Inmate Grievance Commission is an independent agency answerable directly to the Secretary of Correction. It operates independently of the Division of Prisons and conducts hearings and investigations through its employees. Both the inmate and corrections personnel are permitted and required to respond when a complaint has been filed. The Commission after sufficient hearings have been held makes a determination and recommendation to the Secretary of Correction. If the Secretary fails to act upon the Commission's directives within days of receipt of the Commission's proposed order, the order becomes effective. Therefore, inmates have an independent, viable, and meaningful method thorugh which there grievances may be channeled. Furthermore, inmates are free to write the courts, the Governor, the Attorney General, the Secretary of Correction, members of the General Assembly, representatives of the Federal Government, and any other official they wish. Letters to official agencies or persons are mailed uninspected and uncensored. Thus the inmates are by no means cut off from methods whereby their grievances may be remedied.

The Division of Prisons is specifically responsible for maintaining the secure custody of persons confined in its facilities. The goals of this Division are to maintain secure custody and to provide rehabilitation to those inmates who can be rehabilitated. As stated only two outside organizations have been permitted to form inmate organizations within the prison system. These organizations have been demonstrated to have significant rehabilitative value and may continue to function only as long as they fill a legitimate rehabilitative need of the inmates. They have also been determined not to constitute any threat to the order or security of the institution. Neither organization purports to act as spokesman for the inmate.

The creation of an inmate union will naturally result in increasing the existing friction between inmates and prison personnel. It can also create friction between union inmates and non-union inmates. Furthermore, the interests of all inmates are not the same. Those inmates with long-term sentences do not have the same needs and goals as those of short-term inmates. It is quite possible that inmates with long-term sentences would take over a union to the detriment of the prison system and persons within its custody. If a union is permitted to be organized within the prison system, a potentially uncontrollable situation will result. Even if the purposes of the union are peaceful and productive at the outset, abuse of the organization can result in a Frankenstein's monster which cannot be put down. It will enable certain inmates to establish themselves as "big men" within the prinson system. They will be power figures whom other inmates believe to have special authority, special rights, and special powers. Propelling an inmate into such a position would create a hazardous situation. The security of the system itself and of persons confined in it would inevitably be in danger. If the union maintains a foothold, there would be virtually no way to control it.

Finally, it is noted in regard to the policy promulgated by Secretary Jones, that inmates are not prohibited from belonging to a union. They are in fact prohibited from organizing activities, such as soliciting other inmates to join the union. They are permitted to receive publications sent to them directly, but they are prohibited from receiving packets of material from unions or any other source for redistribution. This is in accordance with the Department's policy requiring publication mailed to inmates to be sent directly from the publisher. A serious security problem would result if inmates could receive packets of material and then redistribute them as they see fit. It would be impossible for the Department to inspect every magazine, every book, etc., to insure that no contraband had been placed inside the publication. The exception in regard to Jaycees is based on the recognized fact that the Jaycees are substantial citizens from the free community who are most unlikely to attempt to smuggle contraband into the union or disseminate propaganda subversive of the legitimate purposes of the prison system. Likewise, Alcoholics Anonymous is permitted to publish within the facilities because it is a recognized function that in effect acts as an agent of the Department. It is completely controllable by the Department. The union demands permission to distribute publications and to print material independent of any supervision by the Department.

Finally, in regard to any specific instances of mail being returned, or inspected, or censored, I have no direct knowledge. I have directed personnel under my supervision and in the field units to continue to enforce Departmental policy as it is established by the existing guidelines. Any deviation from the guidelines have been accomplished without my knowledge or consent. I do not know whether any of the incidences described in the petition have occurred as alleged; however, I am in full agreement with the policy established

by Secretary Jones, which policy is dated March 26, 1975. I have directed employees of the Division of Prisons to enforce that policy.

This is the 8th day of April, 1975.

/s/ Ralph D. Edwards

Ralph D. Edwards
Affiant

AFFIDAVIT OF JAMES PEELER SMITH

I, James Peeler Smith, first being sworn depose and say:

That I am employed by the Department of Correction as the Senior Administrative Assistant to Mr. David L. Jones, Secretary of the Department.

In October, 1974, Ms. Deborah G. Mailman, attorney at law, requested permission that Ms. Robbie Purner and Mr. Chuck Eppinette be permitted to visit prisoners on her behalf as her "paralegal assistants." It has been the policy of the Department of Correction to cooperate with attorneys in working with their inmate-clients. As Ms. Mailman represented Mr. Eppinette and Ms. Purner as her paralegal assistants who would be working with her in regard to her professional relationship with her clients, permission was readily given. Ms. Mailman described Ms. Purner and Mr. Eppinette as her paralegal assistants not as employees or agents of the North Carolina Prisoners' Labor Union. At the time of our conversation I did not know that Ms. Mailman was counsel for the union. In fact, no mention whatsoever was made of the union. Recognizing that attorneys have a constitutional right

to correspond and visit with their inmate-clients and believing that this relationship could be carried on through bona fide agents, I advised the Director of Prisons, Mr. Ralph Edwards, that the Department of Correction and the Division of Prisons should recognize paralegal assistants who are employed by attorneys representing inmates in the custody of the Division of Prisons. Mr. Edwards agreed that this was proper. Because many field personnel were believed to be unfamiliar with the function of paralegal assistants to attorneys, I wrote Ms. Mailman a letter granting permission for her paralegal assistants to visit her inmate-clients on her behalf. I asked only that she notify the Superintendent of the unit of planned visitations and that I receive a copy of the letter in the event any of her paralegal assistants should have difficulty gaining admission to a unit. A copy of my letter is attached hereto and incorporated by reference. It should be noted in my letter of October 22, 1974, I set up certain specifics that the Department would require in each case: (1) that the inmates to be visited be specifically identified, (2) that the paralegals were representing Ms. Mailman in a matter "now pending or which may be pending before the courts", and (3) that the paralegal assistants were in fact acting as Ms. Mailman's agents.

Attached hereto and incorporated by reference are copies of letters from Ms. Mailman to Warden Sam Garrison and to the Superintendents of various prison units throughout the State. These letters represent most, if not all, of the copies I have received and in any event are representative of them. As Ms. Mailman is an attorney, it was assumed, without requiring a restatement in each case, that the terms of the understanding were complied with fully in each instance.

It was soon brought to the attention of the officials of the Department of Correction that Ms. Purner and Mr. Eppinette were self-admitted union organizers, as is evidenced

in the *North Carolina Prisoners' Labor Union Newsletter.* A review of the letters from Ms. Mailman to Mr. Garrison and the Unit Superintendents indicates that almost every person visited was an active member of the Prisoners' Union. Specifically the following persons have been identified to me as members of the union: Frank Strader, Wayne Brooks, Vernon Rich, Donald Morgan, Carol L. Williams, Curtis Thompson and Jessie Lee Brake.

Finally on approximately January 30, 1975, I received a telephone call from Deputy Nathan Rice. Mr. Rice advised me that Ms. Purner had requested to bring some material into the unit for an inmate. This material, including stamps and letterhead stationery, was clearly for the purpose of organizing the inmate union and could not reasonably be considered anything necessary in conjunction with a lawsuit. It should be noted that I have received a copy of a letter, dated January 27, 1975, in which Ms. Mailman notified us of Ms. Purner's pending visit to Inmate Carl Williams, Thus, it seems clear that at least a major part of the visits was for the purpose of organizing the inmate union, not for any matter related to the courts in which Ms. Mailman was representing the inmate.

In view of the fact that the two purported paralegal assistants were union organizers by their own admission, that they had visited almost solely only those inmates who are members of the union, and that Ms. Purner had openly attempted to bring material to be used in connection with inmate activities, I agreed that it would be proper to terminate the visiting privileges of Ms. Purner and Mr. Eppinette. Accordingly, with the consent of the Director of Prisons, I sent a letter to Ms. Mailman on February 3, 1975, terminating the visiting privileges. A copy of my letter is attached hereto and incorporated by reference. That letter explicitly sets forth the Department's reasons for acting to

terminate the visiting privileges. It became clear to other members of the staff of the Department of Correction and myself that the spirit as well as the letter of the agreement which was set forth in the letter, dated October 22, 1974, to Ms. Mailman, had been violated.

This the 8 day of April, 1975.

/s/ James Peeler Smith

James Peeler Smith

N. C. DEPARTMENT OF CORRECTION GUIDEBOOK COMMISSIONER'S ADMINISTRATIVE DIRECTIVES

MAIL PRIVILEGES OF INMATES

Mail from inmates –(1) Inmates may write to anyone, but an individual inmate's privilege to write to a particular person or persons may be withdrawn by the officer in charge of the unit where the inmate is assigned for good cause stated in a written notice to the inmate, who shall be allowed to appeal in writing for a restoration of such privilege through the chain of command to the Commissioner of Correction. Any official in the chain will be authorized to restore the privilege if the stated cause for withdrawal is deemed to be insufficient or not sufficiently supported by facts of record. Each official in the chain shall take action on the appeal within one week from the time the official receives the inmate's written request and argument.

(2) Sealed mail from inmates shall not be opened for inspection or impeded in its transmission if addressed to: any officer of a court of the United States or of North Carolina

(judges, attorneys, clerks); any member of the Congress of the United States or any member of the General Assembly of North Carolina; the President of the United States or the Governor of North Carolina; the Attorney General of the United States or the Attorney General of North Carolina; the Director or any agent of the Federal Bureau of Investigation or the Director or any agent of the State Bureau of Investigation; the Commissioner of Correction or any member of the Commission of Correction or any official of the Department of Correction in the chain of command above the officer in charge of the unit to which the inmate is assigned. If there is any question as to whether an addressee is one of these persons, the mail may be held for not more than 24 hours to resolve the question.

(3) Letters from inmates to persons other than those listed in paragraph (2) may also be sealed when placed in the outgoing mail, and they shall not be opened for inspection or impeded in transmission unless there is good cause to believe a particular letter contains contraband or material which constitutes a clear and present danger to the security of the facility or which cannot be lawfully sent through the mail. When a sealed letter is held for inspection, the sender shall be notified of the reason for this action before the letter is opened for inspection, and an opportunity shall be offered for an explanation which may remove the cause for concern. If the cause is not removed by the sender's statement, the opening and inspection shall be performed in the presence of the inmate. If cleared for mailing by the inspection, the letter shall be re-sealed and placed in the mail by the sender in the presence of the inspector.

(4) The privilege of sealing outgoing letters before they are inspected may be withdrawn from an inmate by the officer in charge of the unit to which that inmate is assigned if there is sufficient reason to believe the inmate will use the

privilege for illegal purposes. In any case where the privilege is withdrawn, the inmate affected shall be notified in writing of the reasons and afforded an opportunity to appeal in writing for review of this action through the chain of command to the Commissioner of Correction. Any official in the chain will be authorized to restore the privilege if the stated cause for curtailment is deemed insufficient or not sufficiently supported by facts of record. Each official in the chain shall take action on the appeal within one week from the time the official recieves the inmate's written request and argument.

(5) Packages and large envelopes addressed to persons other than one of those listed in paragraph (2) may not be sealed for mailing by an inmate until inspected by a member of the State Correction Service and found free of contraband or material which constitutes a clear and present danger to the security of the facility or which cannot be lawfully sent through the mail. This inspection shall be done in the presence of the inmate; if cleared for mailing, the item shall be sealed and placed in the mail by the sender in the presence of the inspector.

(6) The sender's name and return address shall appear on the outside of all mail from inmates, but this address shall not indicate that the sender is an inmate of a correctional facility. The correct return address shall be posted on the inmates' bulletin board at each unit.

(7) Postage for mail from inmates without funds may be paid from the inmate welfare fund, but this shall be limited to the cost of 15 ounces of first class mail per month for any one inmate.

Mail to inmate – (1) The officer in charge of a unit, other than one classified as an advancement center by the Commissioner of Correction, shall provide for the inspection

of incoming inmate mail by qualified members of the unit staff. The inspection shall serve to prevent inmates from receiving through the mail contraband or any material that poses a clear and present danger to the security of the facility or which cannot be lawfully sent through the mail.

(2) Mail to inmates which appears to be from one of the persons listed in paragraph (2) under *Mail from inmates* shall be opened by the addressee in the presence of a member of the State Correction Service, who shall see that the contents are free of contraband and, are in fact official or legal correspondence from the person whose name and return address appears on the outside of the envelope or package. The correspondence shall not be read beyond what is necessary to make this determination.

(3) Letters to inmates must be written in English unless an exception to this requirement is made by the Commissioner of Correction or his authorized representative. They may be typewritten, printed, or written legibly in longhand. The sender's full signature and address should appear at the end of the letter. The full name of the inmate should be used in addressing the envelope. The inmate shall instruct his correspondents to use the correct address as posted on the inmates' bulletin board, so that no indication that the mail is going to an inmate of a prison need appear on the outside of mail to inmates.

(4) In addition to letters, the following items may be received by an inmate through the mail, and always subject to inspection and handling as provided in this or other directives:

(a) Clothing approved for use while incarcerated.

(b) Clothing to be used upon release (if received within 15 days of the release date).

(c) Musical instruments (when approval is secured in advance from the officer in charge of the unit).

(d) Unframed pocket-size photographs.

(e) Legal papers.

(f) Publications authorized for donation to or purchase by inmates when sent directly from the publishers.

(g) Pencils and pens.

(h) Religious items.

(i) Tooth brushes; shaving brushes; safety razor and blades.

(j) Radios (with ear plugs) not larger than 9"x9"x13". Inmates are advised that the Department of Correction will not be responsible for replacement due to loss, theft or breakage.

(k) Money should be sent by postal or bank money order or cashier's or certified check.

(5) Any inmate may request in writing authority from the Commissioner to receive a specific item through the mail, which request shall be forwarded through the chain of command to permit the views of each command level to be expressed. During the Christmas Season, the Commissioner of Correction may authorize specific additions to the list of items an inmate may receive through the mail.

(6) No C.O.D. package shall be accepted for any inmate and no inmate shall be authorized to send mail C.O.D. Unauthorized items arriving by mail shall be returned to the

sender at the expense of the inmate addressed, unless the inmate is without funds, in which case the package shall be returned at the State's expense. In either case, a copy of the mail regulations shall be enclosed in the package to be returned. Packages postal authorities will not accept for return to the sender shall be delivered to some charitable organization, or to a law enforcement agency in appropriate cases, and a receipt shall be obtained for the same.

Mail records – The mail officer shall keep a record on Form DC 218 showing the source and destination of all legal and official correspondence, packages and items of monetary value mailed by an inmate, and a separate record on Form DC 218 showing the same kind of information about such items mailed to an inmate. Check and money order numbers shall also be recorded on Form DC 218. The mail officer opening packages and items of monetary value mailed by or to an inmate shall sign his name at the beginning of each day's entries and place his initials beside each entry. The mail officer distributing such mail to inmates shall sign his name at the beginning of each day's entries and shall place his initials beside the signature of each inmate receiving such mail.

N. C. DEPARTMENT OF CORRECTION GUIDEBOOK COMMISSIONER'S ADMINISTRATIVE DIRECTIVES

PUBLICATIONS RECEIVED BY INMATES

Mailed to inmates – An inmate may receive publications through the mail from the publisher. Inmates ordering publications must forward their payments for subscriptions or individual publications with their orders; inmates shall not receive publications of any kind on a trial basis with payment postponed. Persons desiring to give publications to individual

inmates may have them mailed directly to the inmate from the publisher.

Exchanged between inmates – Inmates may exchange newspapers, magazines, books, and other publications but any attempt by this means to exchange contraband shall subject the offender to appropriate disciplinary action.

Inspection – All publications intended for inmates shall be inspected by a member of the State Correction Service before delivery to them unless they are residents of a unit classified as an advancement center by the Commissioner of Correction.

Reasons for rejection – Publications received by inmates must be in the English language; exceptions to this requirement will be made by the Commissioner of Correction or his authorized representative where this may be done without jeopardizing security. Publications received by inmates must be free from material that poses a clear and present danger to the security of the facility or that is obscene. Section 14-190.1(b) of the General Statutes of North Carolina states, ". . . any material is obscene if:

(1) The dominant theme of the material taken as a whole appeals to the prurient interest in sex; and,

(2) The material is patently offensive because it affronts contemporary national community standards relating to the description or representation of sexual matters; and,

(3) The material is utterly without redeeming social value; and,

(4) The material as used is not protected or privileged under the Constitution of North Carolina."

Procedures for rejection – In any instance where a publication intended for an inmate is withheld from him because it contains material believed to pose a clear and present danger to the security of the facility or believed to be obscene, the inmate shall be promptly notified in writing of the reason for delaying his receipt of the publication and informed that he may present argument to a committee appointed by the Commissioner of Correction to resolve the issue. The inmate shall be allowed two weeks from the time he receives written notice of the withholding action in which to present to the Commissioner's Committee his argument in favor of a finding that the publication should be delivered to him. The Committee shall make its determination within two weeks of the time the inmate's argument is received. In instances where the inmate waives in writing his right to have the issue resolved by the Commissioner's Committee, or where he fails to present his argument in writing within two weeks of his receipt of written notice, or where the Commissioner's Committee decides that the publication contains obscene material or material posing a clear and present danger to the security of the facility to which the inmate is assigned, then the publication shall be handled like any other personal property which the inmate is not permitted to have in his possession.

AFFIDAVIT OF ROBBIE PURNER
DATED APRIL 14, 1975

I, Robbie Purner, being first duly sworn, depose and say:

I am presently employed by Suruban Partner's, Inc. and have been so since June, 1973. Suruban Partner's, as a tax-exempt, non-profit, Christian corporation, retains me as Coordinator of its Prison and Jail Project for the purposes of researching, aiding and developing programs which contribute

to the improvement of the criminal justice system in North Carolina and America and which attempt to decrease the injustices suffered by persons incarcerated in correctional facilities. Prior to my employ I was a student at Duke Divinity School of Duke University, Durham, North Carolina, working towards a Masters of Divinity degree. I see my continuing concern and work within the area of criminal justice as arising from and wholly in concert with my ongoing and motivating theological beliefs.

At the time of my initial employ with Suruban Partner's, Inc, my responsibilities involved the development of a state-wide jail-oriented program called Offender Aid and Restoration, Inc. I was responsible for assisting in the legal incorporation and tax exemption of OAR-NC; for establishing the initial Ad Hoc Steering Committee and subsequent Board of Directors for OAR-NC; for working in close connection with Mr. Woodburn Williams, Chief of the North Carolina Jail and Detention Services; for contacting and working with various North Carolina sheriffs and prominent citizens in a number of North Carolina communities in order to establish the necessary groundwork for community based OAR programs that would enlist citizen volunteers to develop one-to-one relationships with persons incarcerated in North Carolina jails. At the same time I was a member of the Board of Directors for National OAR, Inc. My responsibilities and efforts with the development of OAR-NC extended from June 1973 to the fall of 1974. Throughout this period I was a Duke Divinity School student.

Due to the above-named efforts I had occasion to correspond with and meet innumerable citizens in and beyond North Carolina who were actively interested in penal reform. Also I became known to many North Carolina prisoners due to the fact that the National Prison Project of the ABA, located in Washington, D.C. referred many correspondents in

North Carolina prisons to me in my capacity as coordinator of the Prison and Jail Project and development director for OAR-NC. Among the persons with whom I regularly corresponded from the beginning of these involvements were Mr. Wayne Brooks and Mr. Jim Wooten, both presently members of the Board of Directors for the North Carolina Prisoners' Labor Union, Inc. (NCPLU)

In April of 1974 I was contacted by Mr. Tony Dunbar, Director of The Prison Ministry of the Committee of Southern Churchmen, located in Nashville, Tennessee. Mr. Dunbar and I had come to know each other through our mutual concerns about prisons and jails and he was aware of the work Suruban Partner's was doing through its Prison and Jail Project. He explained at that time that a number of people within the Southeast were talking about creating a regional prison and jail reform organization to be comprised of independent state projects that would work on pressing issues of correctional reform, as defined by the people of each state. He asked if I would submit a proposal for North Carolina and consider accepting a position as North Carolina staff person for the Southern Coalition on Jails and Prisons. He further explained that such a position would have to be within an already existent non-profit tax-exempt organization which legally could be the receiving agency for all foundation funding.

In June of 1974 I began my initial work as North Carolina staff person for the Southern Coalition concurrent with my ongoing job as coordinator of Suruban's Prison and Jail Project. Throughout this period until the fall of 1974 I continued as development director for OAR-NC at which time, due to an impossible work load, I turned that position, with the agreement of the OAR-NC, Inc. Board of Directors, over to Henry Vermillion, past Executive Director of the North Carolina Council on Crime and Delinquency and

Secretary of the Board of Directors of OAR-NC, Inc.

At no time have I been employed by or an organizer for the NCPLU. I have and continue to work closely with the NCPLU performing secretarial tasks and making contact with free citizens interested in prison reform whom the members of the Union, due to their incarceration, cannot communicate or work adequately with. This has involved contacting lawyers, legislators, publishers, media persons, medical professionals and others. I have no decision making power with regard to Union policy or activity.

Another way in which I aid the Union is in the logistics of publishing and mailing the Prisoners' Union Newsletter. Articles written by prisoners throughout the state are submitted for consideration to the Board of Directors for publication in the bi-monthly Newsletter. These articles are screened and assembled by the Board Members and mailed to me for delivery to the publisher with whom I then work on lay-out, design, collation and finally, mailing the printed Newsletter to the Union members.

On November 29 and 30, 1974, bundles of Vol. I No. I of the Union Newsletter were sent to unit representatives who had been contacted by the inmate Board of Directors at over 30 prison units. The Union Newsletters were sent in the same fashion that the Jaycee Newsletters were sent. At most of the units, including Central Prison, the Union Newsletters were received and distributed. However, the package of newsletters mailed to Yadkin County (Exhibit A), Davie County (Exhibit B), and Triangle Correctional Center (Exhibit C) were returned to me by the prison officials at those units. I was later informed by Attorney Deborah G. Mailman that the Department of Corrections would not allow packages of newsletters to be sent for distribution and, as a result, I have not made further attempts at mailing newsletters in bulk.

I also receive mail for the Union at P.O. Box 2842 in Durham, North Carolina. This post office box is maintained by Suruban Partner's, Inc. and I utilize it as coordinator of the Prison and Jail Project for correspondence not only with Union Directors and members, but also for all of my correspondence with regard to my broad interests and contacts related to prison reform and criminal justice in general. I receive at this post office box many letters from inmates, both Union members and non-members, who have questions concerning parole and honor grade denials, legal questions, and other questions which require telephone calls to state agencies or other free people. Many Union members write to this post office box rather than to the Board of Directors because they have questions which require further action such as telephoning that cannot be accomplished by incarcerated individuals. I use this post office address as the return address on correspondence with Union members. Union mail sent both from and to me has been interfered with by prison officials in the following ways:

a) I received a letter addressed to myself at P. O.. Box 140 (sic), Durham, North Carolina and postmarked March 6, 1975, from Terry Malik Young at Blanch Unit. This letter had been opened at the top and taped closed (Exhibit D).

b) I received a letter addressed to myself at P. O. Box 2842, Durham, North Carolina, postmarked March 6, 1975, from Johnny Neeley which had been opened at the top and taped closed (Exhibit E).

c) I received a letter addressed to myself at P. O. Box 2842, Durham, North Carolina, postmarked March 12, 1975, from Jim Vickers which was opened at the top and taped closed (Exhibit F).

d) I received a letter addressed to the NCPLU at P. O. Box 2842, Durham, North Carolina, from Joe D. Mintz which had been opened at the top and taped closed (Exhibit G).

e) On or about March 6, 1975, I mailed a certified letter to J. C. Littlejohn at Odom Prison. It was returned unopened, marked "refused by Odom Prison" (Exhibit H).

f) On or about February 19, 1975, I sent a letter containing three memorandums to Richard Murphy. These were returned to me in a Department of Corrections envelope without explanation (Exhibit I).

g) Clerical supplies consisting of notepads and pens which I sent via certified mail to John Lee Hill at Blanch Prison were sent back to me by certified mail by the Blanch Prison Unit (Exhibit J).

h) A certified letter I sent to Roger Bradley on March 5, 1974, was returned to me by certified mail by Blanch Prison (Exhibit K).

i) Memorandums I sent on March 4, 1975, to J. B. Hill, Larry Haynie, Sekou Karanja (Carol L. Williams), James Monroe, Vernon Rich, Merle Hunt, Ernest McIntyre and Julian Francis, at Central Prison, were returned to me by Lieutenant R. J. West on March 11, 1975 (Exhibit L).

j) I sent a letter to Sidney Boyd Eaves at Catawba County Prison Unit in Newton, North Carolina, on March 5, 1975. The letter was returned March 6, 1975, marked "moved, not forwardable." However, when I checked with the office at the Department of Correction Combined Records Department on March 7, 1975, I was informed that Sidney Boyd Eaves was still at Catawba County Prison (Exhibit M).

k) A certified letter sent from me to J.C. Littlejohn on March 14, 1975, was returned unopened, marked "Refused by Odom Correctional Institution (Exhibit N).

l) A certified letter sent from me to Richard Murphy on March 14, 1975, was returned to me, unopened, marked "Refused by Odom Correctional Institution (Exhibit O).

Because of these and other instances of departmental interference with the mails, too numerous to cite herein, I have been forced to certify nearly all the correspondence I mail to North Carolina prisoners regardless of whether they are Union members or non-members. This necessity has more than doubled the postage costs of the Prison and Jail Project over the past three months.

Throughout my employment as coordinator of Suruban's Prison and Jail Project I had been involved in visitation with a number of prisoners throughout North Carolina. Prior to the reorganization of the NCPLU I had been approved for visitation as a personal friend with William B. Upton then incarcerated at Central Prison in Raleigh, Clinton Thompson then at Caledonia Farm, and later at Sampson County Prison Unit, Ezekiel Roberson, then incarcerated at Caledonia Farm, and Wayne Brooks, originally at Central Prison and later at Union County Prison Unit in Monroe. I visited with all of the prisoners on a regular and approved basis throughout the summer of 1974.

In addition, I also visited, on more than one occasion, inmate Kelly Aldridge at the Moore County Unit in a paralegal capacity to conduct interviews and gather information with regard to his personal legal situation for the law firm of Paul, Keenan, and Rowan of Durham. Thereafter, I did extensive research with regard to the Felony Firearms Act and accompanied him to Superior Court in Raleigh,

North Carolina, where he was released from his conviction and incarceration of eighteen months. Similar paralegal services were provided on behalf of Attorney Paul in my visits to Clinton Thompson who presently is being represented by the firm of Paul, Keenan, Rowan & Galloway in habeas corpus action.

On October 10, 1974, Mr. Donald Morgan, inmate at Central Prison in Raleigh, North Carolina, requested that I be placed on his visiting list. He stated my relationship to him as "legal paraprofessional and outside representative of Prisoners' Union." It was returned to him and then forwarded by him to me in a letter of October 26, 1974. As seen, there is written on the face of the form "this lady is already on your list" and attached to it an additional note which reads "Lt. Harris, this lady is already on two other inmates' list. Sgt. Dunn." (Exhibit P) At that time I was visiting, as approved and noted above, both William B. Upton and Wayne Brooks.

On Thursday, October 31, 1974, I went to the visiting office of Central Prison with said form to arrange for a visit with Donald Morgan. The officer on duty, without asking my name, picked up the phone and placed a call. After talking a while he turned to me and said Deputy Warden Rice wanted to speak with me.

He asked who I wanted to see and I told him Donald Morgan. He said he couldn't make special arrangements without getting clearance. I informed him I wasn't asking for an unarranged, immediate visit but simply wanted to set up an appointment for a regular visit within normal department procedures, through which I had been informed I had been approved. Mr. Rice said he had no knowledge of, nor did he believe I had been granted such approval.

I told him I had in my possession a visiting authorization

form which stated I had been approved. Mr. Rice replied that he knew nothing about said form and that I would not be permitted to visit until he got clearance. He told me to call him the next day.

On November 1, 1974, I called Deputy Warden Rice as he asked. He informed me then that as of that date I was approved on no prisoner's visiting list. I asked him when that had been changed as I had been visiting William Upton since early in the summer. (Wayne Brooks had since been transferred to Union County Prison Unit.) He asked me what I meant and I repeated my question explaining that I had visited William Upton once a week for months. Mr. Rice asked how I had been classified and I told him as a friend. He responded that at present I had privileges to visit no one and that in order to gain such privileges it had to be approved by Warden Sam Garrison. I asked if this was normal procedure for everyone who requested visitation and he stated that it certainly was.

On November 5, 1974, Donald Morgan wrote a letter to Mr. Garrison regarding the above-stated denial of visitation (Exhibit Q). He forwarded it to me in a letter of November 12, 1974, calling my attention to a handwritten response singed by Sam Garrison, on the back side of the November 5 letter of inquiry. Mr. Garrison wrote:

> "Miss Purner has been denied visitation rights except as a paralegal helper for Attorney Mailman. She will be allowed to visit you in above capacity. We here have to be advised prior to the visit. I do not think that his is unreasonable and hope that it meets with your approval.
>
> Sam Garrison
>
> Donald
>
> All parties concerned have been advised of

> their procedure.
>
> SPG" (Exhibit R)

Thereafter I was unable to visit further William Upton in that I had no paralegal reasons to see him and my prior personal visiting procedures were denied. Throughout my personal visitation with the other named prisoners, my friendship often involved paralegal services rendered. I provided specific paralegal services to Wayne Brooks and other members of the Board of Directors of the NCPLU during the drafting of the Union's Articles and By-Laws based on my extensive past relationship with tax attorney Karla Simon of Durham, North Carolina, in the writing of the Articles and By-laws for Offender Aid and Restoration of North Carolina, Inc. and in my responsibilities for providing all required information for making application to the Internal Revenue Service for federal tax exemption. I represented Ms. Mailman in a paralegal capacity during visits to Wayne Brooks made in regard to Brooks v. Edwards and provided research and paralegal services to Ms. Mailman's client, Vernon Rich, both while he was incarcerated in Raleigh and in the Mecklenburg County Jail awaiting a hearing before Judge James McMillan in federal court. Such services involved the drafting and typing of motions and affidavits and the contacting of affiants for the purpose of filing notarized affidavits in behalf of plaintiff Rich who represented himself pro se.

At no time have I undertaken or encouraged any prisoners to undertake actions I consider to be a threat to the security or orderly functioning of the Department of Corrections or any other governmental agency. At all times I have understood the goals of the NCPLU to be that of legally and peacefully seeking their First Amendment right to express their own particular views on prison reform to the North Carolina public. At no time have I discussed or known the Union Board or members to discuss the desire of inmates to

influence or participate in the administrative process of running the North Carolina Department of Correction. I have no prior criminal record, have served no sentence in a correctional institution and view my entire past and present activities as nothing other than legal, peaceful and beneficial to all North Carolina citizens.

/s/ Robbie Purner
Robbie Purner

AFFIDAVIT OF NATHAN A. RICE

I, Nathan A. Rice, first being sworn, depose and say:

That I am employed by the Department of Correction in the Division of Prisons as the Deputy Warden of Central Prison, Raleigh, North Carolina.

On or about January 30, 1975, around 1:30 p.m. Ms. Robbie Purner came to my office carrying a large box which contained items which she stated that she wanted to leave for Inmate Carl Williams. Ms. Purner indicated to me that she had been to the Institution Mail Room and there had been some problems about her leaving these items and she wanted me to give her permission to leave the items. I asked Ms. Purner specifically what her problem was. She responded something to the effect that she wanted to leave 200 ten cent postage stamps for Inmate Williams and a supply of Prison Labor Union letterhead stationery. I advised her that she would not be permitted to leave either of these items. I explained to her that writing paper for all inmates and free postage were furnished indigent inmates. Inmates are also only permitted to have on their person a sum of money not in excess of $15.00. She, of course, wanted to leave him $20.00 worth of postage stamps. For him to have this amount of postage stamps on his

person would be in violation of prison regulations. Ms. Purner then asked me if the inmates could get the letterhead stationery made in the print shop. At this point I felt that she was being sarcastic toward me. I also explained that inmates could receive through the mail or purchase from the canteen regular stationery, not letterhead stationery. Inmates are not permitted to carry on a private business while in prison. A copy of the Guidebook regulation pertaining to prisoners engaging in business activities is attached hereto and incorporated by reference. Any letter containing contraband, is returned to the sender in accordance with these regulations. I felt this regulation was applicable to this particular request. At this point Ms. Purner became angry and stated, "You will be hearing some more about this," and then she picked up the box and left my office.

This the ____ day of _____, 1975.

/s/ Nathan A. Rice
Nathan A. Rice
Affiant

AFFIDAVIT OF ROBBIE PURNER

I, Robbie Purner, being duly sworn, depose and say:

That on April 28, 1975, I placed in the mail at the main branch of the United States Post Office in Durham, North Carolina, one thousand nine hundred and fifty-five copies of the third issue of the North Carolina Prisoners' Union Newsletter. That amongst these Newsletters there were individual copies addressed to the following persons confined at the given addresses:

Robert Allen — Person County Unit, Roxboro, NC

Samuel Harvey	Person County Unit, Roxboro, NC
Carlton Weaver	Person County Unit, Roxboro, NC
Gregory Seku Barrett	Yadkin County Unit, Yadkinville, NC
Louix X Pittman	Yadkin County Unit, Yadkinville, NC
James X Harris	Yadkin County Unit, Yadkinville, NC
Ronnie X Rankin	Yadkin County Unit, Yadkinville, NC
Dexter L Blair	Yadkin County Unit, Yadkinville, NC
Robert EX Carroll	Yadkin County Unit, Yadkinville, NC
Douglas Brady	Yadkin County Unit, Yadkinville, NC
Steve Puckett	Yadkin County Unit, Yadkinville, NC

That on May 13, 1975 I received in the mail at P. O. Box 2842, Durham, North Carolina, 22705, a small envelope in which there was placed the labels which had been cut from the Newsletters sent to Mr. Allen, Mr. Harvey and Mr. Weaver. Attached to each of these was a postal correction label, above which was written, "Return to sender–not allowed." (Exhibit A)

That on May 28, 1975, I received in the mail a returned bundle of Newsletters which had been addressed to the above-named men at Yadkin County Prison Unit in Yadkinville, North Carolina. The top Newsletter was addressed to Gregory Seku Barrett and had written upon its face, "Return–Non-deliverable to Division of Prisons." (Exhibit B)

That, in both of these cases, all the Newsletters were individually addressed, in compliance with both the mail regulations and the General Policy regarding inmate unions, as formulated by the North Carolina Department of Correction.

That, I have also learned, and have reason to believe that the Newsletters sent on the same date to Union members at Odom Farm in Jackson, North Carolina, and to Yancey County Prison Unit, in Burnville, North Carolina, were never

delivered to their individual addressees. These included more than two hundred copies, none of which were returned with any indication as to why they had been denied entrance.

/s/ Robbie Purner

AFFIDAVIT OF SHERMAN L. 2X CAUTHEN

I, Sherman L. 2X Cauthen, being duly sworn on oath, depose and say:

That I state unequivocally, that on the month of December, 1974, Officer Jeffey, Officer Oakes and Officer Miles approached inmate Terry Malite Young cell; Jeffey went to the left of the door, Oakes in the center, Miles swings back on the door handle forming a triangle. When inmate Terry M. Young door was open Officer Jeffey and Oakes stepped in quickly with Officer Miles following. They informed Terry M. Young of the existence of the "Newsletter". I Sherman L. 2X Cauthen asked Terry M. Young what they wanted, he said they wanted the Newsletter, that the N. C. Attn. Gen. told them he was to take one and send the rest back. Jeffey (officer) told him to shut up. I, Sherman L. 2X Cauthen and inmate Mr. Bennie Lee Linder and the rest of the inmates on that floor heard this statement and concerning the Newsletter. He has not been placed upon segregation, this following the incident, if it rightfully understooded, because he received no trial before being placed upon lockup.

This Dec. day of 29, 1974

/s/Sherman L. 2X Cauthen

AFFIDAVIT OF RONNIE MANNING AND STEVE BARTON

I, Ronnie Manning and Steve Barton, being first duly sworn deposes and says:

On the afternoon of 12-12-74 between the hours of 4:00 pm and 4:30 pm officers Mize, Oakley, and Jefferies who are prison officials and employed at the Blanch Correctional Institution did go to one Steve Barton's cell on the above date, and stated we (officers) were sent by Sgt. Carter to take up the Prisoners' Union Newsletters that you (Steve Barton) received through the mail. Steve Barton replied that he had all ready distributed them to all the prisoners. On or about 6 pm on the above date Steve Barton was called to the Lt.'s office and was informed by Sgt. Carter that Mr. Oakes the Asst. Superintendent had given him (Sgt) orders to take up all Prisoners' Union Newsletters and dispose of them.

We the affiants feel that because of this affidavit we will be placed under undue harassment by orders of Mr. Oakes, such as unheard of rules and regulations that can and will be used as an excuse for placing the affiants in segregation, better known as the "Hole".

Respectfully Submitted,

/s/ Ronnie Manning

/s/ Steve Barton

AFFIDAVIT OF CLYDE S. ODELL

I, Clyde S. Odell, an inmate confined to the Yanceyville Prison Unit addressed at P. O. Box 217–Yanceyville, North

Carolina 27379, first being duly sworn, depose and say;

That I, acting in a capacity of representative for the North Carolina Prisoner's Union agreed to receive fifty (50) Newsletters and Authorization Forms at the Yanceyville Unit in order to more fully aquaint the inmates with the history, present condition, and goals of the Union with the view of gaining additional membership.

That on December 22, 1974 I was informed by Mr. Preston M. Rogers, Captain of prison unit mentioned here, that a package of 50 Newsletters had arrived addressed to me. That said Captain also informed me that he had sent 49 of the Newsletters back to the sender, thus allowing me to receive only one. Said Captain further stated that this was did in compliance with a ruling of the North Carolina Attorney General.

This is the 29 day of December, 1974.

/s/ Clyde A. Odell
Affiant

AFFIDAVIT OF JAMES O. RICE, JR.

I, JAMES O. RICE, JR., being first duly sworn, depose and say:

I am the President of the Resource Group, Limited, located on Conover, North Carolina, which is contracted by the North Carolina Junior Chamber of Commerce to send the Jaycee Newsletter, *Jaycee Future*, to the Junion Chamber of Commerce chapters located in the prison units under the control of the North Carolina Department of Corrections.

In my capacity of President of the Resource Group I supervise the mailing of these newsletters to the various chapters. To my personal knowledge, these newsletters are mailed in bundles (each newsletter not being individually addressed to a particular inmate) and addressed to one named inmate/member at each unit having a Junior Chamber of Commerce chapter for distribution.

/s/ James O. Rice, Jr.

AFFIDAVIT OF HENRY E. MANNING

I, HENRY E. MANNING, being first duly sworn, depose and say:

I am a State prisoner currently incarcerated at the Washington County Prison Unit, in Creswell, North Carolina, and am a member of the North Carolina Prisoners' Labor Union, Inc. During the month of February, 1975, I requested permission to hold a meeting for the North Carolina Prisoners' Labor Union, Inc. The request was denied by Superintendent Frank A.Mahan, who stated that the Union was not officially recognized by the prison department.

Based upon this denial, we were unable to hold a meeting.

/s/ Henry E. Manning

AFFIDAVIT OF GARY STEVE SOMERSET

I, GARY STEVE SOMERSET, being first duly sworn, depose and say:

I am a State prisoner currently confined at Central Prison in Raleigh, North Carolina, and am a member of the North Carolina Prisoners' Labor Union, Inc. On or about February 24, 1975, I requested permission to hold a meeting at the Odom Farm Prison Unit in Jackson, North Carolina. The request was denied by Leiutenant White, who stated that he had received a memorandum from David Jones (Secretary of Corrections) which stated that the Union would not be allowed to hold meetings.

Based upon this denial, we were unable to hold a meeting at the Odom Prison Farm.

/s/ Gary Steve Somerset

AFFIDAVIT OF DEBORAH G. MAILMAN DATED APRIL 15, 1975

I, Deborah G.Mailman, being first duly sworn, hereby depose and say:

I am a licensed attorney engaged in the full-time private practice of law with offices located at 115-1/2 West Morgan Street, Raleigh, North Carolina. These offices are shared for the purpose of practicing law with attorneys Jerry W. Leonard and Thomas S. Erwin. I am admitted to practice in the Supreme Court of North Carolina, the United States District Court for the Eastern and Middle Districts of North Carolina and the United States Court of Appeals for the Fourth Circuit.

Shortly after I began practice in November of 1972, our law offices took over responsibility for the administration of the Wake County Legal Aid Society. While we were paid a

minimum retained by the Wake County Bar Association to operate the Legal Aid Society, this amount was negligible in comparison to the work involved, and the endeavor was largely viewed as a voluntary one. We served in that capacity for almost two years from January, 1973, until November, 1974, when Legal Aid was established as a full-time, funded operation with two attorneys, a secretary and a paralegal.

During the course of our legal aid work, we received anywhere from two to ten letters per week from inmates in the North Carolina Department of Corrections asking for assistance in a wide variety of matters from purely civil legal problems such as divorce or repossession, but also including numerous complaints about lack of due process in prison, such as punitive transfers, summary disciplinary punishment, computation of good time, confusion in concurrent or consecutive sentence computation, personal injuries resulting from actions of Department of Corrections personnel, requests for assistance in parole and/or parole revocation procedures, requests for assistance in state post-conviction proceedings, federal habeas corpus proceedings, and federal civil rights actions. In addition, we would occasionally receive correspondence or walk-in requests for assistance from relatives of inmates and phone calls from personnel at Women's Correctional Center or Polk Young Center seeking aid on behalf of inmates.

If the lines of communication are open and methods for channeling grievances are as effective as Mr. David L. Jones swears them to be, there is no evidence of it to those outside of the Department of Corrections who receive the pleas and requests of inmates.

As a result of this communicaton as well as an earlier academic interest in prison reform sparked by reading and studying about the causes and effects of the Attica uprising, I

began to develop a strong interest in penal due process and reform. I am also a member of the Board of Directors of the Wake County Chapter of the American Civil Liberties Union and a member of the Board of Directors of the North Carolina Civil Liberties Union and have been for some years. Thus my interest further reflects the growing involvement of the American Civil Liberties Union in prisoners' rights.

Through legal aid and at the request of Mrs. Katharine Larkins, a social worker at Women's Correctional Center, I made regular visits to Women's Correctional Center where I held a legal aid clinic and assisted several inmates with their personal legal problems such as custody and divorce, getting detainers lifted, getting medical assistance and on one occasions drafting, filing and participating in a post conviction hearing. The cases in which I filed pleadings to avoid default, corresponded with opposing counsel to settle a case and appeared in Court or before the Paroles Board are a matter of record.

Internally, it became the procedure in our offices for the secretary to direct all prison mail to my attention and while the load became greater than I could handle, my name spread by word of mouth within the prison system and I was beseiged by yet further requests for legal assistance from prisoners.

Sometime in the spring of 1973, I received a long letter from an inmate named Wayne Brooks in which he proposed to me the idea of a Prisoners' Union or self-help association of prisoners. He asked my assistance in this endeavor for any legal problems the group might encouter. After corresponding with Wayne Brooks, discussing the idea with other free people including lawyers and finally meeting with Brooks in Central Prison, I agreed to represent the Union. We began proceedings for incorporation and I had some conversations with the staff

of then Director Bounds. One newsletter was printed and distributed and authorization slips from inmates were collected, but the Union failed to become viable at that time and my services were not needed.

Meanwhile, in August of 1973, Chuck Eppinette became employed by Jerry W. Leonard and myself as a full time paralegal assistant in our offices which employment has been continuous since that time. In his paralegal capacity, Chuck has been and continues to be responsible for legal research, general office duties, filing and service of pleadings and prisoner visitation. While the quality of Chuck's legal research is invaluable and the great majority of his time is spend in the law library, he has been equally indispensable in the area of prisoner visitation where he has been able to interview an inmate and thereby determine in a way which cannot be accomplished by correspondence alone whether the complaint received is legally meritorious. More often than not, such complaints have not been determined to merit representation beyond the interview and while I or my paralegal associates have made a visit to an inmate, no representation of record subsequently appears.

Further, inasmuch as I am located in Raleigh, I have received requests from other ACLU co-operating attorneys throughout the state to visit people on their behalf for similar purposes. I have been able to satisfy each of these requests only because of the paralegal visitation conducted for me by Chuck Eppinette.

When, in the fall of 1974, the North Carolina Prisoners' Labor Union was reorganizing, the demand for my services in connection therewith began to grow beyond my ability to personally satisfy such demand while at the same time meet my responsibilities with my other clients. It was therefore with a sense of welcome relief that I accepted the offer of

Ms. Robbie Purner to voluntarily assist me in my representation of the Union. I had met Ms. Purner in connection with a project entitled Offender Aid and Restoration and was impressed with her academic credentials as well as her commitment to ideals of prison reform and civil liberties in general which I also share. It is my understanding that she is able to volunteer her assistance to me under a grant she has acquired from the Southern Coalition of Jails and Prisons. In addition, Robbie had attained as a layman through her previous experience, a working knowledge of the law on non-profit corporations, an area in which I am lacking. Her help was therefore gratefully received and the quality of her work, particularly in meeting with members of the NCPLU Board of Directors (all inmates) to iron out questions relating to the corporate structure of the Union has been of great value to me.

When I requested permission from Mr. James P. Smith in October of 1974 for Chuck Eppinette, permanently employed paralegal, and Robbie Purner, paralegal volunteer, to visit inmates on my behalf in connection with my status as an attorney, I did not feel that it was necessary to specify to him the nature of my representation of various prison inmates nor do I now believe that I would be required to divulge to the Department of Corrections the nature and content of an interview I might have with an inmate. In any event, no such request was made, and there is no foundation whatsoever for the asserted conclusion that Robbie Purner or Chuck Eppinnette have misused their authority as paralegals on my behalf or that they are union organizers for whom I am prividing a "cover." Such a sinister implication is altogether unfounded and approaches libel with regard to my integrity as a member of the bar.

In addition to representation with regard to the corporate structure, by-laws and goals of the NCPLU, it was

decided that I could provide worthwhile representation by seeking to co-ordinate prisoner rights litigation in North Carolina. In my various associations with legal aid, ACLU, etc., I had observed that frequently, a meritorious legal issue would be lost in federal court in this district because it was brought pro se by an inmate with or without writ-writer assistance who had a poor factual situation on which to base his claim. Subsequently if the issue were litigated by an inmate with a valid factual claim, the earlier memorandum decision would be used as having settled the law, and the case would be dismissed on Motion or Summary Judgment. Consequently, it was decided that the Union would seek to coordinate litigation so that only those claims which had both a good factual and legal foundation would be litigated. In this regard, I contacted the director of the North Carolina Civil Liberties Union Prison Rights Project and we introduced a resolution aimed at such a project to the Civil Liberties Board, and it was passed by them unanimously at the November, 1974 meeting.

This consultation again resulted in more occasions of no litigation or formal appearances than it did in formal legal appearances. However, I undertook to represent Wayne Brooks in *Brooks v. Edwards*, 75-0073-CRT before this Court, and Robbie Purner's visitation with Wayne Brooks was instrumental and necessary to that representation. In addition, I have advised, although not formally represented, Vernon Rich, in several matters including two actions pending in the United States District Court for the Western District and one in Rowan County Superior Court.

It was not until February 13, 1975, when Ms. Purner returned to my office after having been refused entry to Central Prison that I had any idea that the paralegal visitation system was in any way offensive to the Department of Corrections. I telephoned Mr. James Peeler Smith who

informed me that no paralegal personnel would be permitted to visit anyone on my behalf and that a letter of explanation would be forthcoming. Upon receipt of Mr. Smith's letter, I wrote and explained my representation of the NCPLU to him (see Complaint, Exhibits D and E). A further letter of inquiry from me to Mr. Smith (attached, Exhibit A) brought no response and in a subsequent telephone call, Mr. Smith informed me that a policy with regard to the Union would be forthcoming and that I would be notified of that policy when it was ready. I was never contacted further and saw the Department of Corrections policy for the first time in the affidavit of Defendant Jones served upon me on April 11, 1975.

In closing, I believe it is important to state that I do not consider my interest in penal reform and due process for prisoners something for which I need to provide a cover. I have never hidden my representation of the Prisoners' Union from any person. Moreover, I was selected by the Wake County Bar Association and the American Bar Association BASICS (Bar Association Support to Improve Correctional Services) Project to conduct a study on the need for legal aid to prisoners, and I expect that I was selected in part because of my interest and experience in working with incarcerated persons. I have dealt in good faith with Mr. James Peeler Smith on behalf of Defendants Jones and Edwards, and am personally shocked and saddened by their determination that my representation of the Union is not bona fide. I further believe that I have complied fully with the requirements promulgated to me for a paralegal visitation conducted on my behalf.

This the ____ day of April, 1975.

/s/ Deborah G. Mailman

AFFIDAVIT OF CHUCK EPPINETTE
DATED APRIL 14, 1975

I, Chuck Eppinette, being first duly affirmed, hereby depose and say:

I have been employed, full time, since August 1973, as a paralegal by two Raleigh attorneys, Ms. Deborah G. Mailman and Mr. Jerry W. Leonard. My work as a paralegal includes doing legal research, writing memoranda of law and appellate briefs, and until I was denied access to the prisons by Mr. James Peeler Smith, interviewing inmates.

Contrary to the allegations of Mr. James Peeler Smith, I am not an organizer, agent, or member of the North Carolina Prisoners' Labor Union, Inc. I do, however, assist the Union in legal matters (e. g. researching points of law for writ-writers and attorneys working with the Union, locating attorneys to help with certain cases, finding if an alleged deprevation of an inmates Constitutional rights is already before a Court, etc.). In this regard, and upon the request of the Union, I wrote a short note on what could be expected from the writ-writers, attorneys, and paralegals working in conjunction with the Union. This note was printed in the *Union Newsletter*, Vol. 1 No. 2. The description of myself as "Paralegal Aide to Ms. Debbie Mailman and the N. C. Prisoners' Union" was added without my knowledge by someone unknown to me.

I have never used my paralegal visitation rights as a "cover" for Union organizing. Every visit I made to an inmate at Central Prison was made to discuss a legal problem of someone being represented by Ms. Mailman or by the North Carolina Civil Liberties Union.

This the 14 day of April, 1975.

/s/ Chuck Eppinette

AFFIDAVIT OF JERRY W, LEONARD
DATED APRIL 15, 1975

I, Jerry W. Leonard, after being duly sworn, depose and say that:

I am a licensed attorney in the State of North Carolina, having been licensed by the State of North Carolina on the 14th day of August, 1971.

Since the 1st day of January, 1972, I have maintained an office at 115-1/2 West Morgan Street, Raleigh, North Carolina, where I have engaged in the active practice of law.

William Charles Eppinette, Jr. has been employed by me continuously since the month of August, 1973, in the position of "law clerk." In his capacity as a law clerk, he has assisted me in research, preparation of legal documents, and investigation.

/s/ Jerry W. Leonard

AFFIDAVIT OF CARL L. WILLIAMS

Carl Leonard Williams, being duly sworn says:

That I am acting vice-chairperson of the North Carolina Prisoners' Labor Union, acting at Central Prison. That in addition to the said position with the North Carolina Prisoners' Labor Union, I serve on the Board of Directors thereof.

That, in my capacity with the Prisoners' Union, through the fall of 1974 until the time of this instant affidavit, my primary objective has been and is, to create a positive

relationship with and among the various racial groups that make up the inmate population of the North Carolina Department of Correction. My work has been, to the greatest extent, at Central Prison; however, through correspondence with outside individuals and groups, I try to establish a harmony among all races towards a goal of inter-racial understanding and cooperation within the inmate population of the North Carolina Department of Corrections.

With other members of the Prisoners' Union, we have, and continue to strive to erase racial tension within the North Carolina Prison system.

Specifically, at Central Prison, I have talked with various groups of different races that had misunderstandings between them resulting from clashes in daily living within Central Prison, and as a result, mutual agreement has been achieved and racial tension decreased.

One specific incident recently happened at Central Prison. A fight broke out in the recreation area of Central Prison's Westside. The two prisoners involved were of different races; one white and the other black. I happened to be in the area when the fight broke out last month in the recreation area. After the fight was over, I talked with several white prisoners and several black prisoners who witnessed the fight and events leading up to it. From these conversations, I learned that the cause of the fight was a money debt between the two prisoners: the black man owed the white man money and when the white man demanded money for the debt, the black man said that he did not have the money to pay the debt. The fight resulted.

After the fight was over, and I completed talks with both races and learned the above information. With that, later, I was approached by four black men who wanted to start a fight with several white men in retaliation. They felt that the fight had been unfair and that there were several whites against one black.

After informing them that this was not the case, that it had been a fair fight, the angry blacks decided to let the situation go by without any further incident.

I feel that if no one had been available to talk with the above mentioned prisoners, that a race riot would have resulted. After reporting my actions to the Board of Directors, we all felt the same.

Since the incorporation of the Prisoners' Union last fall, I strongly feel and have observed a decline in racial tension at Central Prison because of Union activities oriented toward creating a peaceful racial environment at Central Prison.

At Central Prison, I have seen racial tension created by prison officials only to be lessened by Prisoners' Union action. After the above described fight, I attempted to post on bulletin boards at Central Prison Union information designed to lessen racial tension inside Central Prison. The information was torn down from the bulletin boards by prison guards and I was ordered not to place anymore Union information upon the bulletin boards at Central Prison. In reaction to this, several prisoners, both black and white, wanted to stage a protest because of prison official action of taking the Union information from the bulletin boards and ordering that no more be placed upon them. I felt that the situation could reach racial complications and a physical clash with prison officials. Acting in line with the peaceful goals of the Prisoners' Union, I spoke with the angered prisoners and reached agreement that we would seek redress for prison official actions in the court.

As of this writing, I continue to work with fellow inmates at Central Prison attempting to show that racial conflict is not the way towards prison reform and physical violence only makes things worse. I feel that I am, as well as the Union as an organization, is hampered and stalled by prison officials in that

they do not recognize the Union and do not allow it to meet or associate at Central Prison and with outside friends and supporters. That other organizations at Central Prison are allowed to meet and such needs for those purposes are provided by the prison officials at Central Prison.

Another area of racial conflict that I am currently trying to work on is that of prison official policy in providing prison jobs for various prisoners at Central Prison. Along with other blacks and myself, we have historically observed a practice wherein prison officials select white inmates for clerical positions, lab assistants in the prison hospital and various jobs that are equal to those of the white collar class in free society; the common labor jobs, such as janitor, "runboy" (an inmate who goes to the canteen for other prisoners and prison officals) and prison official shoeshine boy, usually go to the blacks. Along with myself and other balck prisoners, we feel that prison officials select white inmates for the "white collar" jobs arbitrarily and at the whim of personal racial bias and for the purpose of creating a mood of animosity between blacks and whites in that a feeling of being a lesser human being is instilled in the black population in view of denial to improve oneself through the learning of such "white collar" prison jobs that result in meaningful employment for an individual who is released from prison having gained such skills as typing, hospital work and various skilled labors available to those prisoners who are selected to work at jobs where such skills can be learned.

/s/ Carl Leonard Williams

CARL LEONARD WILLIAMS

AFFIDAVIT OF JAMES V. ROWAN

Your affiant first being duly sworn, deposes and says:

I am an attorney licensed by the State of North Carolina working with the firm of PAUL, KEENAN, ROWAN & GALLOWAY, located at 202 Rigsbee Avenue, Durham, North Carolina.

That during the year of August 1973 to August 1974 Ms. Robbie Purner, then employed with Suruban Partners, Inc. did perform various paralegal services through this office including but not limited to, the research of law with regard to various post-conviction and habeas corpus actions brought on behalf of a number of state prisoners confined within the facilities of the North Carolina Department of Corrections; paralegal visitation with state prisoners for the purposes of interview and the gathering of legal information necessary for the perfection of pending litigation; the receiving and sending of correspondence to various state prisoners regarding their litigation as prepared by this law firm.

At no time was Ms. Purner actually in the employ of the firm. Due to mutual interests her paralegal services were requested and received through her volunteer cooperation.

/s/ James V. Rowan

AFFIDAVIT OF VERNON WALLACE RICH

Vernon Wallace Rich, being duly sworn says:

That I am acting Chairperson of the North Carolina Prisoners' Labor Union at Central Prison. In this capacity I perform duties pursuant to the by-laws of the said

organization.

The Prisoners' Union was incorporated pursuant to North Carolina law on October 10, 1974, and presently has approximately 2,200 members in 40 different prison units throughout the North Carolina Corrections System.

The Prisoners' Union is operated under democratic principles in that a majority of membership vote determines the actions and policy of the Union. Because of our incarceration (the Union is made up of only prisoner membership who have voting powers), we are dependent on and our historic steering movement has been accomplished mainly through correspondence via the United States mails.

Currently, the Board of Directors at Central Prison and surrounding prison units operates to determine the membership desires within the scope of Union policy established pursuant to the Union Constitution and by-laws. The Board of Directors has 14 official directors. We are a multi racial organization as held in our by-laws and therefore, the governing body of the Union, the Board of Directors, is composed of seven white persons, six black persons and one American Indian. The Board of Directors can be composed of twenty directors. The current Board of Directors is in the process of selecting two female prisoners from the Women's Correctional Institution at Raleigh to serve on the Board. As held in the by-laws, the Board of Directors continues to remain equally represented by all races. Until state wide elections are held within the Union organization, the selection of directors will remain with the provisional Board of Directors.

The primary purpose of the Prisoners' Union is to work legally and peacefully to alter or eliminate the practices of the North Carolina Department of Corrections policies which we

believe to be in conflict with just, constitutional and social interests of all persons in prison and in free society. Some of our current goals are to publish a bi-monthly newsletter wherein Union progress and policy is provided for the membership and interested parties. We have published two editions of our newsletter in the past and continue to work towards an issue to be published every two months. We are in the process of working to establish half way houses across the State of North Carolina, at central points, wherein released prisoners can have a place to live while finding permanent homes and jobs. Along with the creation of half way houses, the Union is working to establish an employment service wherein jobs for ex-offenders will be found. We are engaged in establishing a blood donation program. New memberships are being sought and non-voting membership from free society is being planned. Our goals are in the area of making contact with free society towards establishing racial harmony among prisoners and free society and creating a setting wherein prisoners will have a place to live and a means to make a living when released from prison. We also strive to get people out of prison as soon as possible through parole and work release or other community involvement programs pursuant to the laws of North Carolina and the United States. We are of the opinion that long term incarceration only embitters people in prison and by continuing to assist the prisoner upon his release into free society by providing a home and job, such assistance will reduce further crime and such assistance will work to erase a need to commit crime. We also plan to establish work shops in prison and out, that will help educate ex-offenders and offenders in economics and basic education including vocational training. Further, and currently, we are engaged in establishing the right to associate and meet as an organization at Central Prison and at the units across the State of North Carolina where we may begin to work toward the reality of the mentioned long and short range goals of prison reform.

We have joined together in the Union for the purpose of effectively advocating our political and government beliefs and to assist one another in the assertion of our legal rights. To legally and peacefully accomplish its goals, as set out here, and within the recorded goals of the Prisoners' Union, the membership seeks redress of grievances and various constitutional rights through court orders and legislative actions of the State of North Carolina and the United States. We also try to make our point of view known to the public through media education and contact with individual persons and groups in free society who show an interest in working with us.

Some of the rights we currently seek are the right to assemble and associate, the right to access to the courts through conference and advice from our legal department. Such rights are currently denied us by authority of orders from the North Carolina Department of Correction.

As chairperson with the North Carolina Prisoners' Labor Union, I have also sought to establish positive connections with the prison officials that govern the North Carolina Department of Correction. On several past occasions, I have talked with the Warden of Central Prison in an effort to explain that the Union is in no form, a threat to the security of the North Carolina Prison System. I have informed him that our organization is peaceful and non-violent and that I, personally, would not be involved in any form of violent Union policy. In that capacity, I spoke for the entire Union population. These meetings took place with Mr. Garrison at his office inside Central Prison.

As has been our practice through the fall of 1974 to the date of this instant affidavit, the Prisoners' Union has accomplished a unity of races at Central Prison. All races

work together toward instilling responsibility within its membership. Much of this is accomplished by the memberships' actual participation in the democratic union policies and operation. Individual self reliance is created by the awareness achieved when inmate members and non-members work together to make their immediate and future environments secure from economic/social dangers of racial tension, lack of education creating less employment opportunity, by discussing these problems and attempting to find peaceful and crime free alternatives. In our continuing efforts to rehabilitate ourselves along with the assistance of any interested parties within the North Carolina Department of Correction and free society, we pose no threat to the security of the North Carolina Prison System or free society. Our operation is similar to organizations already operating within the prison system such as the Jaycee organization and Alcoholics Anonymous organization.

In our attempts to organize peacefully and within the laws of North Carolina, we have encountered difficulties with the authority making body of the North Carolina Prison system. Such difficulties have been in the form of denial of right to associate as an organization, denial of right to assemble and meet, stoppage of Union mail to and from various members and denial of paralegal visitation to Union members from Union legal attorney Deborah Mailman.

Such denials include cancellation of paralegal visitation to Central Prison by paralegal aides Robbie Purner and Chuck Eppinette to Attorney Deborah Mailman. Due to the inadequate legal facilities at Central Prison such advice and counsel is necessary to advise and assist Union members in legal affairs connected with the Union movement.

On February 13, 1974, Robbie Purner, paralegal aide, was denied entrance into Central Prison to discuss legal

activity and planning with this affiant in regards to Union matters and affiants' personal criminal case in which Attorney Mailman is advising me. Since that time paralegal aides have been continually denied access to Attorney Mailman's clients inside Central Prison to gather information and offer advice in criminal and legal matters for Attorney Mailman.

Other denials include posting of Union information on the bulletin boards at Central Prison informing members of Union progress and general information. Denial of providing an office space and supplies for Union operation at Central Prison. Because we are unable to hold meetings or post notices and because our mail is being held and interfered with, we have been greatly hampered. Also, inmates who wish to join the Union but are approaching parole eligibility or for community programs or work release have said that they cannot afford the risk of association with the Union because of harassment with correction department officials. Some are afraid that association with the Union will result in punishment from guards or other prison department personnel. Such denials are in conflict with prison officials providing office and meeting space for the Jaycee organization at Central Prison and the Alcoholic Anonymous organization at Central Prison wherein these organizations are provided office space, a meeting area, office supplies and state paid printing of publications informing members of the organization's progress and operation. The Prisoners' Union receives none of the above said facilities or provisions and is not allowed to meet or post information on the bulletin boards as the other two mentioned organizations are. Union material such as the newsletter is not paid for by the State of North Carolina through orders of the prison department.

As a former president of the Jaycee chapter of the Western Tarheel Jaycees, I have participated in weekly meetings sponsored and paid for by the North Carolina

Department of Corrections; at these meetings, food was provided and space for the meetings provided, along with the admittance of outside free persons supporting the Jaycee chapter allowed at the meetings. The publication for the Jaycee chapter was and is provided by the North Carolina Department of Correction. The Prisoners Union is refused any of the above mentioned provisions.

As a former member of the Alcoholic Anonymous organization at Central Prison, I have attended the weekly meetings wherein food is provided by the North Carolina Department of Corrections through funds earned by leather craft sales provided by the prison officials' orders. A. A. meetings are held in the Central Prison Gym twice weekly with free persons and members attending the meetings. The publication is printed four times each year with 1500 copies of the booklet being printed at Central Prison at state cost. The publication is then mailed to various members and interested individuals by first class mail from central prison, paid for by the State of North Carolina. The North Carolina Prisoners Union is provided none of these said provisions and denied them by prison officials.

/s/ Vernon W. Rich

AFFIDAVIT OF CHUCK EPPINETTE
DATED DECEMBER 18, 1975

I, Chuck Eppinette, being first duly affirmed, depose and say:

On the 3rd day of November, 1975, I accompanied Mr. Jerry W. Leonard, Attorney at Law, to Yadkinville, North Carolina where a hearing on the habeas corpus petition of Willie O. Norris was being held. After the hearing I had

planned to talk with Mr. Norris about the consequences of the Judge's ruling and about a personal injury case about which he had conferred with Ms. Mailman. When I approached Mr. Norris I was stopped by a man who identified himself as the Superintendent of Yadkinville Prison Unit who informed me that the Department of Corrections would not allow me to talk to any of the inmates under its control.

/s/ Chuck Eppinette

AFFIDAVIT OF JERRY W. LEONARD
DATED DECEMBER 18, 1975

Jerry W. Leonard, after being duly sworn, deposes and says that:

I.

I am an attorney duly licensed to practice in the State of North Carolina with offices located at 115 1/2 West Morgan Street, Raleigh, North Carolina.

II.

William Charles Eppinette is employed by me and those attorneys associated with me in the position of paralegal assistant.

III.

On or about the 3rd day of November, 1975, I appeared in the Yadkin County Superior Court and presented evidence and oral arguments in support of the habeas corpus petition of Willie O. Norris, then confined within the North Carolina

Correctional System. My paralegal assistant, William Charles Eppinette, had assisted in preparing the Petition, gathering the evidence, and preparing the legal arguments. At my request, he accompanied me to the Yadkin County Superior Court for the purpose of assisting me in the final preparation and presentation of Mr. Norris' Petition.

Upon arriving at the Yadkin County Superior Court, Mr. Eppinette and I discussed several aspects of the Petition with Mr. Norris. After the Court rendered a decision favorable to Mr. Norris, I was approached in the Courtroom by an employee of the Department of Corrections whom I assume had accompanied Mr. Norris from his prison unit. My best recollection of the conversation which ensued is as follows:

> Upon his request, I gave him my name and watched him write it down. Thereupon, he requested the name of the attorney that was appearing with me. I told him that there was no other attorney representing the Petitioner at that hearing and the heretofore unidentified male accompanying me was my paralegal assistant. He asked his name and I replied, "Chuck" Eppinette. He then wrote the name William Charles Eppinette below my name on his memo pad.
>
> Shortly thereafter I attempted to explain the disposition of the Petition with my client, Mr. Norris. Mr. Eppinette was in my presence. I was called over to the side by the attorney for the State and by the above mentioned employee of the Department of Corrections and informed that although I could talk with Mr. Norris, Mr. Eppinette would not be allowed to talk with Mr. Norris, nor would he be allowed to be in my presence when I conferred with my client.

This 18th day of December, 1975.

/s/ Jerry W. Leonard

AFFIDAVIT OF EDWIN M. SPEAS, JR.

I, Edwin M. Speas, Jr., first being sworn depose and say:

That I am a Special Deputy Attorney General for the Department of Justice of the State of North Carolina.

On or about the 3rd day of November, 1975, I appeared for the State of North Carolina in the Yadkin County Superior Court in opposition to the Habeas Corpus Petition of Willie O. Norris, then confined within the North Carolina Correctional System.

I am the attorney referred to as "the attorney for the State" in the affidavit of Jerry W. Leonard dated December 18, 1975, and filed with Plaintiffs' trial brief in this case. I requested that Mr. Charles Eppinette not be a part of the post hearing conference between Attorney Leonard and Inmate Norris for two reasons. First, a representative of the Department of Correction informed me that the Department of Correction did not want Mr. Eppinette meeting with inmates of the Department of Correction because of his union organizing activities. Second, since Inmate Norris had access to his legal representative, Mr. Leonard, the use of a paralegal was unnecessary after the hearing.

This the 23rd day of December, 1975.

/s/ Edwin M. Speas, Jr.
Special Deputy Attorney General

AFFIDAVIT OF DEBORAH G. MAILMAN DATED DECEMBER 18, 1975

Deborah G. Mailman, being first duly sworn, hereby deposes and says:

I am an attorney engaged in the full-time practice of law at Raleigh, North Carolina. I agreed to represent Louis Pittman and T. J. Reddy, inmates in the North Carolina Department of Corrections for the purpose of filing a lawsuit on their behalf in the Wake County Superior Court pursuant to North Carolina General Statutes § 148-113. On or about October 30, 1975, my office mailed a copy of the proposed complaint and an original and four copies of a verification to Louis Pittman at the Yadkin County Prison Unit with a letter instructing him to read the complaint and sign and have notarized the verifications. I did not hear from him until on or about November 17, 1975, at which time I received a letter from Pittman complaining that the notary public, Sgt. Phillips, had refused to notarize the verifications. (A copy of the letter is attached.) Upon receipt of this letter, I telephoned the office of James Peeler Smith, Senior Administrative Assistant to Secretary of Corrections, David Jones, to inquire of this matter. Mr. Smith was unavailable at the time but returned my call later that day at which time he apologized for the incident and advised me that he would call Yadkinville immediately and direct that the "error be corrected." At no time did Mr. Smith deny that the incident had taken place as it was related to me by Louis Pittman. On or about November 23, 1975, I received Pittman's signed vertifications which were notarized on November 18, 1975.

/s/ Deborah G. Mailman

AFFIDAVIT OF FRED G. MORRISON, JR.

I, FRED G. MORRISON, JR., being first duly sworn, depose and say:

1. I am the Executive Director of the Inmate Grievance Commission established as part of the North Carolina Department of Correction by the North Carolina Legislature. I have held this position since its inception in September of 1974 having been appointed thereto by Governor James Holshouser. In addition I have served for four years on the Penal System Study Committee of the North Carolina Bar Association and I am a member of the Legislative Commission on Sentencing, Criminal Punishment, and Rehabilitation (Knox Commission). I am a past president of the North Carolina Jaycees which has chapters in 59 of North Carolina's 78 prison units; and from 1969-1974 I served in the office of the Governor dealing with the problems of prisons, probation and parole.

2. I have read the Constitution and By-laws of the North Carolina Prisoners' Labor Union, Inc. and on Christmas Day, 1974, I met personally with several inmate organizers and officers of the Prisoners' Union (NCPLU) to discuss with them the philosophy and plans of the Union.

3. On this basis, it is my considered opinion that the North Carolina Prisoners' Labor Union, Inc. does not pose a danger to the North Carolina Department of Correction or the orderly administration thereof. I foresee no threat to rehabilitation or other prison programs, nor do I believe that the Prisoners' Union poses any threat to the jurisdiction or operation of the Inmate Grievance Commission. Rather I believe it would be beneficial if the prison administration were less fearful of the prospect of an inmate organization. It is my opinion that constructive change will be more likely to

take place if there is cooepration from within the institutions, and this belief is reinforced by my observation of grievance procedures in other states.

/s/ Fred G. Morrison, Jr.

PLAINTIFFS' REQUEST FOR ADMISSIONS

TO: JACOB L. SAFRON
Attorney for Defendants
P. O. Box 629
Raleigh, North Carolina

The following request for admissions are served pursuant to Rule 36 of the Federal Rules of Civil Procedure. These requests are addressed to and the admissions or denials thereto shall reflect the cumulative knowledge of the above-named Defendants. Defendants are required to admit or deny the truth of the facts set forth in the separate numbered paragraphs below in the manner prescribed by Rule 36, F. R. C. P.

1) The Department of Corrections, with the approval of Defendant Jones, made a recommendation to the correction subcommittee of the House Base Budget Committee to abolish the positions of Inmate Grievance Commission Executive Director and his staff.

2) The recommended budget cut would abolish the entire Grievance Commission's professional staff including all investigators.

3) Defendant Edwards informed the correction subcommittee that if the present direction of division between the Grievance Commission staff and the Department of

Correction officials continue, it's going to cause trouble in the prisons.

4) Defendant Edwards told the corrections subcommittee that the Department of Corrections has not seen much benefit derived from the Inmate Grievance Commission.

5) Deputy Secretary of Corrections Donald Torpa, an agent of Defendant Jones, told the corrections subcommittee that the decision from the United States Court of Appeals for the Fourth Circuit which allows inmates to file Federal suits before exhaustion of State remedies (*McCray v Burrell*, ____ F. 2d. ____ (4 Cir. 1975), eliminated the original rationale for creation of the Inmate Grievance Commission.

6) The facts set out in the attached article entitled *Budget-Paring Aimed at Grievance Commission*, which appeared in the May 29, 1975 edition of the *News and Observer* are true.

Respectfully submitted this 30th day of May, 1975.

/s/ Deborah G. Mailman
Attorney for Plaintiff
115 1/2 West Morgan St.
Raleigh, North Carolina 27601
(919) 834-0779

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

NORTH CAROLINA PRISONERS' LABOR UNION, INC., on behalf of itself and all its members, Plaintiff	)	
v.	)	CIVIL NO. 75-0089-CRT
DAVID L. JONES, Secretary of North Carolina Department of Corrections; RALPH EDWARDS, Commissioner of North Carolina Department of Corrections, Defendants	)	

RESPONSE TO REQUEST FOR ADMISSIONS

Defendants make the following statements in response to the request for admission of fact served upon them on May 30, 1975.

1. They admit the matter set forth in request No. 1. However, this recommendation resulted from the directions of the Correction's Sub-Committee of the House Base Budget Committee to indicate those areas in which budgetary cuts totaling Four Million Dollars could be made in the base budget proposal of the Department of Correction.

2. They admit the matter set forth in request No. 2.

3. Defendant Edwards admits the matter set forth in request No. 3.

4. Defendant Edwards admits the matter set forth in request No. 4.

5. Defendants admit the matter set forth in request No. 5.

6. They admit the accuracy of the article attached to request No. 6.

RUFUS L. EDMISTEN
ATTORNEY GENERAL

/s/ Jacob L. Safron
Assistant Attorney General

Attorneys for Defendants

Supreme Court, U. S.
FILED
SEP 16 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1874

DAVID L. JONES, Secretary of the North Carolina Department of Corrections, RALPH EDWARDS, Commissioner of the North Carolina Department of Corrections,
Appellants

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC., on behalf of itself and all its members,
Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

MOTION TO AFFIRM JUDGMENT

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INDEX

Statement 1

Argument 5

Conclusion 10

TABLE OF CASES

PAKA v. MANSON, 387 F.Supp. III (D. Conn. 1974) 5

NATIONAL PRISONERS' REFORM ASSOCIATION v. SHARKEY, 347 F.Supp. 1234 (DRI 1972) 5

PELL v. PROCUNIER, 417 U.S. 817 (1974). 5

PROCUNIER v. MARTINEZ, 416 U.S. 396 (1974) 5

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. _____

DAVID L. JONES, Secretary of the North Carolina Department of Corrections, RALPH EDWARDS, Commissioner of the North Carolina Department of Corrections,
Appellants

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC., on behalf of itself and all its members,
Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

MOTION TO AFFIRM JUDGMENT

Pursuant to Rule 16 (1)(c) of the rules of this Court, Appellee moves the Court to affirm the judgment of the United States District Court for the Eastern District of North Carolina on the grounds 1) that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument, and 2) the appeal is not sufficiently important to justify plenary treatment by this Court.

STATEMENT

On March 18, 1975 the North Carolina Prisoners' Labor Union, Inc. brought suit in the U.S. District Court for the Eastern District of North Carolina seeking to enjoin the Secretary of Corrections from interferrence with Prisoners' Union mail and other related matters. On March 26, 1975, the Secretary of Corrections issued a statewide General Policy which prohibited prisoners from soliciting others to join the Prisoners' Union and made it a major disciplinary offense to do so. On this basis, Honorable F.T. Dupree, Jr. presiding United States District Judge certified the action as requiring a Three-Judge Court. In May of 1975 Honorable Clement F. Haynsworth, Jr., Chief Judge of the Fourth Judicial Circuit designated the Three-Judge Court.

For a period of several months thereafter, the parties proceeded to accumulate a voluminous record composed of affidavits, depositions and other means of discovery. The Three-Judge Court heard the case on February 6, 1976 and issued a Memorandum Decision on March 16, 1976 (Jurisdictional Statement, Appendix A,p.20).

In this unanimous opinion, the Court declared that the questions decided were presented in the following factual context:

1. Inmates are permitted to join a union and have been and are being permitted to join the North Carolina Prisoners' Labor Union, Inc. Some 2,000 prisoners have already joined. There are no membership dues although dues are authorized by the by-laws. The union is an organization of inmates associated together for the purpose of working for prison reform.

2. Although permitting membership, the defendants oppose the solicitation of other

inmates to join and have made solicitation an infraction of its general disciplinary rules.

3. Not only is personal solicitation by inmate to inmate forbidden but so also is solicitation by correspondence or by newsletter or magazine. Indeed, solicitation by anyone by any means is prohibited.

4. Some newsletters addressed to certain inmates have been returned as nondeliverable. Because of the apprehension that such publications may contain articles slanted to encourage membership the defendants enforce their general rule forbidding the receipt of bulk mail. They will not permit an inmate to receive a bundle to be redistributed by him to other inmates.

5. Union meetings are forbidden. Employees of the Department of Correction are forbidden to negotiate with any person acting as a representative of any union, and no outsider will be admitted into a prison unit for the purpose of soliciting union membership.

6. Disparate treatment is accorded other organizations. Bundles of newsletters are allowed to be received from the Junior Chamber of Commerce, and redistribution to individual inmates is permitted.

7. Inmate members of the JC's are allowed to hold meetings in the prison units, and those meetings may be attended by outside speakers, outside JC members and friends from free society. The same is true of Alcoholics Anonymous, and in one institution a troop of Boy Scouts of America has been permitted to operate. Prisoners are permitted to assemble for religious services.

8. Due sometimes to mistake, sometimes to gaps in the formulation of policy and its execution, and especially due to the

very nature of this lawsuit, there have been a number of recent incidents amounting to a denial of the sixth amendment right of a prisoner to legal representation. Most of the incidents have involved the utilization of paralegals and the suspicion of lower echelon prison administrators that the paralegals were engaged in soliciting membership rather than in the implementation of this lawsuit or other court proceedings. At no time have the defendants themselves countenanced the denial of legal representation, and it is established policy that the use of paralegals is permitted.[1].

The Court further determined that "There is not one scintilla of evidence to suggest that the Union has been utilized to disrupt the operation of the penal institutions."[2]. Thus it was held that "In a system that permits membership in a union, we are unable to perceive any substantial governmental interest in supressing expression on the subject-whether for or against."[3].

A Judgment issued pursuant to the Memorandum Decision was entered on April 12, 1976 and the defendants gave Notice of Appeal in apt time. On April 16, defendants moved the District Court for a Stay which was denied April 20, 1976. A Motion for Stay directed to this Court was denied by the Honorable Chief Justice Warren E. Burger on April 27, 1976.

---

1. Memorandum Decision, J.S. pp.23-25.
2. Ibid. p.28.
3. Ibid. p.27.

ARGUMENT

We believe that the District Court did not err in holding that the Prisoners' Union shall be accorded the privilege of bulk mailing...(and) the privilege of holding meetings under such limitations and control as are neutrally applied to all inmate organizations and to the extent and only to the extent, that other meetings of prisoners are permitted.[4].

I

THE QUESTIONS ON WHICH THE DECISION OF THE DISTRICT COURT ARE BASED ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

a) Appellants claim that the questions presented in this case are substantial because the decision of the District Court is contrary to the decision of another District Court in Paka v. Manson, 387 F.Supp. III (D. Conn. 1974). However, the decision of the Three-Judge Court in this matter is consistent with yet a third District Court Decision, National Prisoners' Reform Association v. Sharkey, 347 F.Supp. 1234 (DRI 1972). More importantly, the decision in the present case is consistent with the related Supreme Court cases of Pell v. Procunier, 417 U.S. 817 (1974) and Procunier v. Martinez, 416 U.S. 396 (1974). In fact, these decisions serve as the guiding light by which the District Court sees to find the facts and make their decision. So long as the decision of the lower court is in accord with prevailing Supreme Court law,

---

4. Memorandum Decision, J.S. p.32.

the argument that there is a contrary decision in another district does not make for a substantial question. Moreover, a mere reading of the conflicting district court opinion shows that the cases are clearly distinguishable on their facts.

b) Appellants in their jurisdictional statement reprint their own affidavits which articulate their fears with regard to the inmate union and explain why they have permitted other organizations to meet. In addition to these affidavits, the Court considered the depositions of prison administrators Paul Keve, former Commissioner of Corrections for Minnesota and presently Director of Adult Correction for the State of Delaware and James W. Mullen, Warden of the Adult Correctional Institution for the State of Rhode Island who testified with regard to the incident related in the testimony cited in the Jurisdictional Statement as follows:

Q: In this incident, that you were telling about, on cross-examination, when the so-called Youth Commission was put out of business by a group of older prisoners, the older prisoners, who were, I believe, you say are now charged with assault, the ones who were responsible for this?

A: Yes, sir.

Q: Were any of them directors or officers of the Reform Association?

A: No, sir.

Q: Were you able to specifically identify the Reform Association with this movement to stamp out the Youth Commission in any way?

A: The people that did it all live together in one -- in the same tier, where, say, the President and Vice President live, and which is called GH&I Block.

Q: Beyond that, was there any connection?

A: No.[5].

The District Court also considered numerous affidavits including that of Fred Morrison, Jr., Executive Director of the North Carolina Inmate Grievance Commission and a member of the Legislative Commission on Sentencing, Criminal Punishment, and Rehabilitation, who stated in an affidavit filed in this case:

> I have read the Constitution and By-laws of the North Carolina Prisoners' Labor Union, Inc. and on Christmas Day, 1974, I met personally with several inmate organizers and officers of the Prisoners' Union (NCPLU) to discuss with them the philosophy and plans of the Union. On this basis, it is my considered opinion that the North Carolina Prisoners' Labor Union, Inc. does not pose a danger to the North Carolina Department of Correction or other prison programs, nor do I believe that the Prisoners' Union poses any threat to the jurisdiction or operation of the Inmate Grievance Commission.[6].

---

5. Deposition of James W. Mullen, pp.60-61.
6. Jurisdictional Statement, p.26.

With regard to the rehabilitative or other value of the inmate union, the Court concluded:

> On conflicting expert opinion evidence we are left with no firm conviction that an association of inmates is necessarily good or bad, and we decline to make the characterization. It is not necessary that we do so in order to decide the narrow issues remaining in the case.[7].

II

THE APPEAL IS NOT SUFFICIENTLY IMPORTANT TO JUSTIFY PLENARY TREATMENT BY THIS COURT.

It is important to note that the decision of the lower court is narrowly drawn to the particular facts of this case. Appellants concerns for security, order and rehabilitation are provided for and protected by the District Court.

> In a system that permits membership in a union, we are unable to perceive any substantial governmental interest in suppressing expression on the subject--whether for or against. To permit an inmate to join a union and forbid his inviting others to join borders on the irrational.
>
> The substantial intersts of the state in its penal system are the maintenance

7. Memorandum Opinion J.S., p.26.

of "security, order and rehabilitation" Procunier v. Martinez, 416 U.S. 396, 413 (1974). "(T)he limitation of first amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interst involved." Id. We are unable to perceive why it is necessary or essential to security and order in the prisons to forbid solicitation of membership in a union permitted by the authorities. This is not a case of riot. THERE IS NOT ONE SCINTILLA OF EVIDENCE TO SUGGEST THAT THE UNION HAS BEEN UTILIZED TO DISRUPT THE OPERATION OF THE PENAL INSTITUTION.

Nor is there any evidence tending to show that the inmates intend to operate it to hamper and interfere with the proper interests of government. Defendants' apprehension of misuse is not shared by other prison administrators of equal expertise and experience. Although the Union is said to have been active for many months and to number some 2,000 members, the record is bare of any suggestion of concerted activity. If the day should ever come that inmates threaten concerted action to force compliance with their demands and to disrupt prison discipline, the Secretary and the Commissioner are fully empowered to not only stop further solicitation of membership but to put down the Union and its adherents to whatever extent may be necessary to restore and protect security and order.[8].

8. Memorandum Opinion J.S. pp.27-28. (Emphasis Added)

The Court enjoined Appellants from punishing inmates for soliciting others to join the Appellee organization, from interferring with letters and publications concerning the organization, and requiring the Appellants to allow the inmate union to meet under the same restrictions and standards applied to other inmate organizations. The Court pointed out repeatedly that Appellants could disband the Appellee organization if the organization ever threatened concerted action.

Contrary to Appellants assertion that the District Court has discounted the fears and concerns of Corrections administrators, the Court carefully weighed concerns for security and order with the constitutional claims of the inmates and issued a decision which reflects that balance.

CONCLUSION

We acknowledge that problems of prison management are complex and difficult. Overcrowding, rehabilitation and security are among the many concerns. The future of legal and administrative developments is uncertain. Notwithstanding the concern of all parties over these issues, they are not presented to the Court in this case. The Appellants have already issued new reguations to cover meetings of the inmates and the mail has been delivered. The prison administrators have retained their control over the system as the District Court provided.

Respectfully submitted,

NORMAN B. SMITH

DEBORAH G. MAILMAN

Supreme Court, U. S.
FILED
JAN 21 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1874

DAVID L. JONES, SECRETARY OF THE
NORTH CAROLINA DEPARTMENT OF CORRECTIONS,
RALPH EDWARDS, COMMISSIONER OF THE
NORTH CAROLINA DEPARTMENT OF CORRECTIONS,

Appellants

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC.,
ON BEHALF OF ITSELF AND ALL ITS MEMBERS,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA

BRIEF FOR APPELLANTS

THE STATE OF
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INDEX

Page

JURISDICTION 2

QUESTIONS PRESENTED 3

STATEMENT OF THE CASE 4

INTRODUCTORY STATEMENT 6

SUMMARY OF ARGUMENT 9

ARGUMENT:

I. THE FIRST AMENDMENT AND FOURTEENTH AMENDMENT DO NOT REQUIRE THE NORTH CAROLINA DEPARTMENT OF CORRECTION TO ALLOW INMATES TO ASSEMBLE AND SOLICIT OTHER INMATES FOR THE PURPOSE OF ORGANIZING A PRISONERS' LABOR UNION. 13

(A) WHEN DETERMINING WHETHER PRISON RULES AND REGULATIONS ARE NECESSARY FOR THE MAINTENANCE OF ORDER AND SECURITY, THE FEDERAL COURTS MUST ALLOW PRISON ADMINISTRATORS WIDE LATITUDE. 13

(B) THE ANALYSIS EMPLOYED BY THE LOWER COURT IN THIS CASE IS INCONSISTENT WITH PELL V. PROCUNIER, 417 U. S. 817 (1974). 20

(C) THE DECISION OF THE THREE JUDGE COURT IS CONTRARY TO OTHER CASES INVOLVING PRISONERS' RIGHTS TO ASSOCIATE DECIDED BEFORE AND AFTER PELL. 26

II. THE STATE'S REFUSAL TO PERMIT MEETINGS AND SOLICITATION OF MEMBERS BY THE NORTH CAROLINA PRISONERS' LABOR UNION DID NOT DEPRIVE THE UNION OF EQUAL PROTECTION OF THE LAWS. 31

III. THE STATE'S REFUSAL TO ALLOW MULTIPLE DISTRIBUTION OF THE NEWSPAPER OF THE NORTH CAROLINA PRISONERS' LABOR UNION WAS NOT UNCONSTITUTIONAL. 35

CONCLUSION 38

APPENDIX A-1

TABLE OF CASES

Page

Atkins v. City of Charlotte, 296 F. Supp. 1068 (W. D. N. C. 1969) 7

Blue v. Hogan, Civil Action No. C76 1160A (N. D. Ga. September 21, 1976) 8, 38

Brooks v. Edwards No. 74-362 CRT (E.D.N.C. 1975) . . 29

Christman v. Skinner, 468 F. 2d 723 (2nd Cir. 1972) . . 26

Cooper v. Riddle, 540 F. 2d 731 (4th Cir. 1976) 14

Cruz v. Beto 405 U. S. 319 (1971) 38

Edwards v. Sard, 250 F. Supp. 977 (D. C. 1966) 23

Finney v. Arkansas Board of Correction, 505 F. 2d 194 (8th Cir. 1974) 38

Frazier v. Ciccone, 506 F. 2d 1022 (8th Cir. 1974) . . 38

Goodwin v. Oswald, 462 F. 2d 1248 (2nd Cir. 1972) . . 14

Greer v. Spock, ____ U. S. ____, 96 S. Ct. 1211, 47 L. Ed. 2d 505 (1976) 34, 37

Hyser v. Reed, 318 F.2d 225 (D.C. Cir. 1963) 26

Kleindienst v. Mandel, 408 U. S. 753, (1972) 21, 22

Knuckles v. Prasse, 302 F. Supp. 1036 (E. D. Pa. 1969), aff'd 435 F. 2d 1255 (3rd Cir. 1970) cert. denied 403 U. S. 936 (1971) 27

Lanza v. New York, 370 U. S. 139 (1962) 26

Meachum v. Fano ____ U.S. ____,96 S.Ct. 2532, 49 L.Ed. 2d 451 (1976) 14

Morales v. Schmidt, 494 F. 2d 85 (7th Cir. 1974) . . . 7

Paka v. Manson, 387 F.Supp. 111 (D. Conn. 1974) 8, 34, 35, 36, 38

Pell v. Procunier, 417 U. S. 817 (1974) . . 10, 11, 20, 25,32

Preiser v. Rodriquez,411 U. S. 475 (1973) 13

Price v. Johnston, 334 U. S. 266 (1948) 20

Procunier v. Martinez, 416 U. S. 396 (1974) . 9, 13, 36, 38

Ross v. Blackledge, 477 F. 2d 616 (4th Cir. 1973) . . . 38

Ross v. Moffitt, 417 U. S. 600 (1974) 11, 29,31

Saxbe v. Washington Post, 417 U. S. 843 (1974) . 10, 21, 23

Sharp v. Sigler, 408 F. 2d 966 (8th Cir. 1969) 27

Theriault v. Carlson, 339 F. Supp. 375 (N. D. Ga. 1972) vacated and remanded *Theriault v. Carlson, 494 F. 2d 390 (5th Cir. 1974)* 27, 28

Theriault v. Silber, 391 F. Supp. 578 (W. D. Texas 1975) 28

United States ex rel Miller v. Twomey, 479 F. 2d 701 (7th Cir. 1973) 19

Wolff v. McDonnell, 418 U. S. 539 (1974) 19, 37

STATUTES INVOLVED

Page

42 U.S.C. §1983 2
28 U.S.C. §1343 2
28 U.S.C. §2201 2
28 U.S.C. §2281 2
28 U.S.C. §2284 2
28 U.S.C. §1253 3
N.C.G.S. §95-98 7
N. C. G. S. §148-101 22

MISCELLANEOUS

In Constant Fear, Remick, Peter (Reader's Digest Press 1975). 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

NO. 75-1874

DAVID L. JONES, SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS, RALPH EDWARDS, COMMISSIONER OF THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS,

Appellants,

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC., ON BEHALF OF ITSELF AND ALL ITS MEMBERS,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

BRIEF FOR APPELLANTS

OPINION BELOW

The Memorandum Decision of the Three-Judge District Court for the Eastern District of North Carolina is reported at

409 F. Supp. 937 (E. D. N. C. 1976). A copy of the Memorandum Decision dated March 16, 1976 may be found on page twenty of the Jurisdictional Statement. A copy of the Judgment dated April 8, 1976; and a copy of the Notice of Appeal filed April 26, 1976 are incorporated in the Jurisdictional Statement at pages thirty-three through thirty-five.[1]

JURISDICTION

This suit was brought by the Appellee, North Carolina Prisoners' Labor Union, Inc., on behalf of itself and all its members, seeking injunctive and declaratory relief and monetary damages under the authority of 42 U. S. C. § 1983, 28 U. S. C. § § 1343 and 2201.

A Three-Judge Court was convened pursuant to 28 U. S. C. § § 2281 and 2284 to consider the constitutionality of regulations issued by the Secretary of the North Carolina Department of Correction on March 26, 1975 which provided in pertinent part:

> No employee of the Department shall authorize the use of Departmental facilities for such organization [declaring itself to be or acting as an inmate labor organization], negotiate, bargain with, or otherwise enter into discussion with such an organization or representative of such organization nor permit such organization to hold meetings or assemble on Departmental property.

[1] The Jurisdictional Statement will be abbreviated "J. S." throughout the text of this brief.

> Persons in the custody of the Department of Correction are prohibited from soliciting other inmates about membership in any inmate union. If the officer in charge has reason to believe that correspondence between inmates concerns organization of an inmate union in violation of this rule, then the correspondence may be censored and if necessary delivery may be withheld. Any inmate accused of soliciting shall be subject to discipline for agitating and failing to obey a lawful order. The unit superintendent or his designated representative shall proceed against the inmate accused in accordance with established Departmental procedures. A copy of the entire General Policy issued March 26, 1975 may be found in the Jurisdictional Statement. (J. S. pp. 37, 38.)

The Memorandum Decision of the District Court was filed on March 16, 1976. The Judgment was filed on April 12, 1976 and Notice of Appeal was filed on April 26, 1976.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U. S. C. § 1253, which authorizes an appeal from an Order of a Three-Judge Court granting a permanent injunction.

QUESTIONS PRESENTED

I. WHETHER THE FIRST AND FOURTEENTH AMENDMENTS PREVENT THE NORTH CAROLINA DEPARTMENT OF CORRECTION FROM PROHIBITING INMATE ASSEMBLY FOR THE PURPOSE OF ORGANIZING THE NORTH CAROLINA PRISONERS' LABOR UNION, INC. WHERE THE JAYCEES, ALCOHOLICS ANONYMOUS AND THE BOY SCOUTS OF AMERICA, ORGANIZATIONS

WHICH PROMOTE PROGRAMS AND HAVE BEEN DETERMINED TO MEET VALID REHABILITATIVE NEEDS, ARE ALLOWED TO MEET?

II. WHETHER THE NORTH CAROLINA DEPARTMENT OF CORRECTION CAN CONSTITUTIONALLY PROHIBIT INMATES FROM SOLICITING OTHER INMATES TO JOIN THE NORTH CAROLINA PRISONERS' LABOR UNION?

III. WHETHER THE NORTH CAROLINA DEPARTMENT OF CORRECTION IS REQUIRED BY THE FIRST AMENDMENT AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, TO PERMIT THE NORTH CAROLINA PRISONERS' LABOR UNION THE PRIVILEGE OF BULK MAILING INTO THE UNITS OF THE DEPARTMENT OF CORRECTION BECAUSE THE DEPARTMENT PERMITS THAT PRIVILEGE TO THE JAYCEES?

STATEMENT OF THE CASE

Tnis is an action for declaratory and injunctive relief and monetary damages brought pursuant to 42 U. S. C. § 1983 against David L. Jones, Secretary of the North Carolina Department of Correction, and Ralph Edwards, Director of the Division of Prisons of the North Carolina Department of Correction, for alleged deprivation of rights secured by the Constitution and laws of the United States. Tne Appellee, the North Carolina Prisoners' Labor Union, Inc. (hereinafter the "Union"), claimed that the Defendants refused to allow prisoners in their custody to meet for the purpose of forming a union, or to allow union organizers to enter the prison facilities, while permitting the existence within the prison system of other inmate organizations, among which are the

Jaycees and Alcoholics Anonymous; that each of these approved organizations have chapters in numerous units and are permitted to hold meetings and have outside representatives of these organizations meet with the inmate population from time to time. Further, the Jaycees are accorded the privilege of mailing their newsletters in bulk to the various prison units at which Jaycee chapters are located.

On March 26, 1975, Appellant, David L. Jones, Secretary of the North Carolina Department of Correction, issued regulations which are quoted above. (J. S. pp. 37, 38.)

On April 25, 1975 Judge F. T. Dupree, Jr., denied the Union's Motion for Preliminary Injunction and by separate Order dated April 29, 1975, certified the pendency of an action requiring a Three-Judge Court.

On March 16, 1976, the Three-Judge Court filed a Memorandum Decision finding the Secretary's regulation to be unconstitutional and holding that (1) inmates and all other persons shall be permitted to solicit and invite other inmates to join the Union orally or by written or printed communication; (2) the Union shall be accorded the privilege of bulk mailing to the extent, and only to the extent that such a privilege is accorded other organizations; and (3) the Union and its inmate members shall be accorded the privilege of holding meetings under such limitations and control as are neutrally applied to all inmate organizations. . ." (J. S. pp. 20-32). On April 12, 1976, the Court filed a Judgment incorporating the provisions of the Memorandum Decision (J. S. pp. 33, 34) which further provided that "Free persons otherwise entitled to visitation with inmates . . . shall not be denied access to such visitation by reason of their association or affiliation with the Union."

INTRODUCTORY STATEMENT

Before beginning this Argument, we wish to point out to the Court certain disparities between the facts as interpreted by the Three Judge Court and the actual facts as they appear in the record of this case. First, the Union presented itself to the Three Judge Court as a reform organization that had no intention of collectively bargaining with prison officials to obtain more favorable conditions. This definition of the "Union" was elicited from counsel for the Union by questioning from the Three Judge Court. The Court accepted the definition as presented inspite of the fact that the organization had called itself a "Union" from the beginning.[2] Also, in its newspaper dated December 1975, long after the "Union" had begun this litigation, it listed as one of its proposed goals the following:

> Prisoners should be encouraged to organize for the right to collectively bargain for better conditions, higher wage scales, and for their own personal well-being. (See p. A-1, Infra.)

On another page of that same newspaper, (See p. A–1, infra.), there was a space where inmates were requested to "authorize the agents or representatives of said Union to represent [the inmate] and to act as collective bargaining agent in all matters pertaining to rates of pay, hours of employment and all other terms and conditions of incarceration." Finally, in its Newsletter No. 1 attached to the complaint, the Union acknowledges a $1,000 contribution from the "North Carolina AFL-CIO". It seems clear then, that

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[2]See certificate of Incorporation in the record.

the Union did think of itself as a bargaining unit. Nevertheless, we do not feel compelled to elaborate further on this particular misconception. As we will show, it is not necessary to determine whether the proposed organization is a "reform organization" or a "Union" to determine whether the State must recognize it.[3] We point out the misconception only to explain to this Court that the lower court misunderstood the issues before it.

This lack of understanding was most evident in the lower court's finding that the State "permits inmates to belong to a corporate union or organization." (J. S. p. 27.) When the State drafted its regulation prohibiting inmate labor unions, it was aware of "the conflicting considerations that should influence particular decisions in this area."[4] It recognized a right of outside individuals, specifically those in charge of the office of the North Carolina Prisoners' Labor Union in Durham, North Carolina, to communicate their beliefs to *individual prisoners*:[5] It recognized the right of each

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[3]If it is a "Union", N. C. G. S. §95-98 provides that "Any agreement . . . between any agency, instrumentality, or institution in the State of North Carolina, and any labor union, trade union, or labor organization as bargaining agent for any public employees of such . . . agency or instrumentality of government is hereby declared to be against the public policy of this state, illegal, unlawful, void and of no effect." Cf. *Atkins v. City of Charlotte*, 296 F. Supp. 1068 (W. D. N. C. 1969).

[4]See *Morales v. Schmidt*, 494 F. 2d 85, 87 (7th Cir. 1974) (Stevens, J., concurring). Then Judge Stevens expresses the idea that prison regulations restricting First Amendment rights of prisoners that are carefully drafted with a clear awareness of the conflicting interests involved should be presumed valid.

[5]See Mail Regulations (A pp. 133-138).

individual prisoner to believe whatever he chooses. Even if the State had sought to prohibit beliefs, it clearly could not have done so. Such a prohibition would obviously be unenforceable. The Department never acquiesced to *any* functional organization of prison inmates within the walls of the State's prisons. In fact, the regulations clearly prohibited solicitation and assembly and made both disciplinary offenses. *The regulations involved granted inmate members of the "Union" only the right to believe–nothing more.* The State acted in good faith–it based its regulation on an objective evaluation of the law. The lower court mistakenly construed this good faith effort as a concession that the *Union* posed no security problems. Its decision totally discounted the fears and concerns of prison administrators and the express prohibitions in the state regulations. We will show that the Three Judge Court offered a simplistic solution to a "very important issue that deserves more than cursory analysis."[6] In fact, the decisions of this Court, misread by the lower court, *require* more than cursory analysis. We will show that concerns voiced by correctional officials in this case and previously recognized many times by this Court require reversal in this case.

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[6]See *Paka v. Manson*, 387 F. Supp. 111, 115 (D. Conn. 1974). In *Paka*, plaintiff prisoners sought to form "an organized group of elected representatives of inmates within the prison to meet together, and to take their proposals, criticisms, suggestions and the like to the administration." Such a reform group is equivalent to the "Union's" current definition of its organization. As will be discussed in detail, the Court found that the State could prevent organization of the Union. Accord, *Blue v. Hogan*, Civil Action No. C 76 1160 A (N.D. Ga. September 21, 1976).

SUMMARY OF ARGUMENT

THE NORTH CAROLINA DEPARTMENT OF CORRECTION IS NOT CONSTITUTIONALLY OBLIGATED TO RECOGNIZE THE NORTH CAROLINA PRISONERS' LABOR UNION. THE DEPARTMENT'S REGULATIONS THAT PROHIBITED MEETINGS OF THE UNION AND SOLICITATION OF INMATES BY OTHER INMATES WERE NOT UNCONSTITUTIONAL.

I. WHEN DETERMINING WHETHER PRISON RULES AND REGULATIONS ARE CONSTITUTIONALLY VALID, THE FEDERAL COURTS MUST ALLOW PRISON ADMINISTRATORS WIDE LATITUDE.

The Federal Courts are obligated to allow Prison Administrators "wide latitude in anticipating probable consequences of allowing certain . . . practices." *Procunier v. Martinez*, 416 U. S. 396, 404, 405 (1974). The prison administrators involved in this case have submitted several valid reasons for refusing to recognize prisoner's Union. Briefly they are the following:

1. The inmate Union would create friction between inmates and staff.

2. Long term inmates with different interests than short term inmates might force their interests on others creating a possibly uncontrollable situation. Thus some inmates will become "big wheels" with special authority, special rights, and special powers.

3. When an organization of prison inmates has no bargaining power, its only source of strength is militancy. Strikes or riots are likely to occur when officials refuse to deal with inmates.

The decisions of this Court clearly indicate that Federal Courts are required to respect the opinions of prison administrators when they are supported by reason and logic. The Three Judge Court failed to give any weight to these considerations in spite of this Court's mandate.

II. THE ANALYSIS EMPLOYED BY THE LOWER COURT IN THIS CASE WAS INCONSISTENT WITH PELL v. PROCUNIER, 417 U.S. 817 (1974).

In *Pell*, this Court held that challenges to prison regulations restricting First Amendment Rights

> "must be analyzed in terms of legitimate policies and goals of the corrections system . . . central to all corrections goals is the institutional consideration of internal security within the corrections facilities themselves. . . *Pell v. Procunier*, 417 U.S. 817, 822, 823 (1974)."

The Court went on to hold that an absolute prohibition of face to face interviews between press representatives and individual specifically named inmates that they requested to interview did not violate the constitutional rights of the prisoners. The principle security concern expressed by correctional officials in *Pell* and the companion case, *Saxbe v. Washington Post*, 417 U. S. 843 (1974), was that certain inmates might become "big wheels" as a result of interviews. They then could use their status to encourage others to violate institutional rules. The absolute ban was upheld in "light of the alternatives means of communication permitted under the regulations."

It is obvious that the "big wheel" becomes much more dangerous when he is able to organize a group of underlings to support him and enforce his demands. Thus the security interests expressed in this case are even more urgent than those expressed in *Pell*. Also, the Department of Corrections provides inmates with alternative methods of communication. They may write to anyone, and they are allowed visitors consistent with security requirements. Reporters are allowed to interview specific inmates that are willing to talk with them subject only to time, place, and manner restrictions. The inmates are also provided with an internal grievance mechanism subject to outside review. For these reasons, *Pell v. Procunier* controls this case. Still, the Three Judge Court gave no weight to *Pell*. Again, its failure to do so was unmistakingly erroneous.

III. THE STATES REFUSAL TO PERMIT MEETINGS AND SOLICITATION OF MEMBERS BY THE NORTH CAROLINA PRISONERS' LABOR UNION DID NOT DEPRIVE THE UNION OF EQUAL PROTECTION OF THE LAWS.

> "Despite the tendency of all rights to declare themselves absolute to their logical extreme, there are obviously limits beyond which the equal protection analysis may be pressed without doing violence to the principles recognized in other decisions of this Court." *Ross v. Moffitt* 417 U. S. 600, 612 (1974).

Since the decision of the Three Judge Court is patently inconsistent with *Pell v. Procunier*, the Union's equal protection claims is without merit.

Further, the fact that the State allowed the Jaycees, Alcoholics Anonymous, and the Boy Scouts of America to

meet and organize within its prisons did not require the State to recognize a Prisoners' Labor Union. All three recognized organizations have positive goals relative to productive restoration of offenders to active, lawful participation in the community. The goals of these organizations have been scrutinized, evaluated, and approved by prison officials. All three organizations facilitate the rehabilitation of offenders. At best, a prisoners' union provides an unnecessary means of communicating prisoner's complaints to officials. Prison officials cannot be forced to accept the security risks inherent in such a union in order to provide this unnecessary alternative. Admission of certain organizations does not leave the State powerless to bar other types of organizations.

IV. THE STATES' REFUSAL TO ALLOW MULTIPLE DISTRIBUTION OF THE NEWSPAPER OF THE PRISONERS' LABOR UNION WAS NOT UNCONSTITUTIONAL.

For the reasons cited above, the union has no right to actively function within a prison. *A fortiori*, it has no right to distribute its leaflets. Widespread circulation of the union publications can provide a base for collective action such as strikes or riots. Distribution to a group of inmates forcefully raises the risk of agitation and unrest that prison administrators may legitimately seek to combat.

ARGUMENT

I. THE FIRST AMENDMENT AND FOURTEENTH AMENDMENT DO NOT REQUIRE THE NORTH CAROLINA DEPARTMENT OF CORRECTION TO ALLOW INMATES TO ASSEMBLE AND SOLICIT OTHER INMATES FOR THE PURPOSE OF ORGANIZING A PRISONERS' LABOR UNION.

(A) WHEN DETERMINING WHETHER PRISON RULES AND REGULATIONS ARE NECESSARY FOR THE MAINTENANCE OF ORDER AND SECURITY, THE FEDERAL COURTS MUST ALLOW PRISON ADMINISTRATORS WIDE LATITUDE.

The problems of prison management have been described by this Court as "complex and intractable, . . . not readily susceptible of resolution by decree." *Procunier v. Martinez* 416 U. S. 396, 404, 405 (1974). Thus, federal courts are obligated to allow prison administrators "wide latitude in anticipating the probable consequences of allowing certain . . . practices." *Id.* In *Preiser v. Rodriquez*, 411 U. S. 475, 491, 492 (1973), Justice Stewart remarked that "it is difficult to imagine an activity in which a state has a stronger interest or one that is more bound up with state laws and regulations than the administration of its prisons." This Court again indicated its deference to prison officials when it held due process inapplicable to transfers between prisons absent state statutes or regulations mandating them. The Court refused to

> "place the [Due Process] Clause astride the day to day functioning of state prisons and involve the judiciary in issues and discretionary decisions that are not the business of federal judges . . . The

> federal judges do not supervise state prisons, the administration of which is of acute interest to the state." *Meachum v. Fano*, ____ U.S. ____, 96 S. Ct. 2532, 2540, 49 L. Ed. 2d 451, 461 (1976)

Meachum means that the federal courts are not to assume the role of "super wardens" of state prison facilities. *Cooper v. Riddle*, 540 F. 2d 731, 732 (4th Cir. 1976). The Chief Judge of the United States of Appeals for the Second Circuit has warned that:

> Federal judges should keep in the forefront of their minds, when passing on the acts of government officials, that they have not been vested with executive or legislative power rather than rush to impose their supposedly superior knowledge on all sorts of questions, upon the duly appointed officials who have lived with the problems and have been given responsibility to deal with them. Failure to observe such self limitation will ultimately have most serious consequences. *Goodwin v. Oswald*, 462 F. 2d 1248, 1251 (2d Cir. 1972) (*Friendly, C.J.*, dissenting).

The precedents cited above clearly indicate that this Court has required federal courts to respect the opinions of prison administrators when they are supported by reason and logic. Defendant David L. Jones, Secretary of the Department of Correction, expressed his opinion on the formation of a prisoners' union in his affidavit.

> The existence of a union of inmates can create a divisive element within the inmate population. In a time when the units are already seriously overcrowded, such an element could aggravate already tense conditions. The purpose of the Union

> may well be worthwhile projects. But it is evident that the inmate organizers could, if recognized as spokesman for all inmates, make themselves to be powerful figures among the inmates. If the Union is successful, these inmates would be in a position to misuse their influence. After the inmate Union has become established, there would probably be nothing this Department could do to terminate its existence, even if its activities became overtly subversive to the functioning of the Department. Work stoppages and mutinies are easily foreseeable. Riots and chaos would amost inevitably result. Thus, even if the purposes of the union are as stated in the Complaint, the potential for a dangerous situation exists, a situation which would not be brought under control. Thus, my responsibilities to the people of North Carolina, to the employees of the Department of Correction, and to the inmates themselves necessitate that this Department refuse to recognize the legitimacy of the union. . . (A pp. 119, 121).

Mr. Ralph D. Edwards, Director of the Division of Prisons, added in his Affidavit that based on his observations and experiences in corrections:

> The creation of an inmate union will naturally result in increasing the existing friction between the inmates and prison personnel. It can also create friction between union inmates and nonunion inmates. Furthermore, the interests of all inmates are not the same. Those inmates with long term sentences do not have the same needs and goals of those of short term inmates. It is quite possible that inmates with long term sentences would take over a union to the detriment of the prison system and

persons within its custody. If a union is permitted to be organized within the prison system, a potentially uncontrollable situation will result. Even if the purposes of the union are peaceful and productive at the outset, abuse of the organization can result in a Frankenstein's monster which cannot be put down. It will enable certain inmates to establish themselves as "big men" within the prison system. They will be power figures whom other inmates believe to have special authority, special rights, and special powers. Propelling an inmate into such a position would create a hazardous situation. The security of the system itself and of the persons confined in it would inevitably be in danger. If the union maintains a foothold, there would be virtually no way to control it. (A pp. 123, 128).

In addition, the State offered a book written by Peter Remick, an inmate incarcerated at Walpole Prison in Massachusetts.[7] The book told a horrendous story of destruction of life and property at the Prison caused in large part by a union organization of inmates. In opposition to these opinions, the Union offered the depositions of James W. Mullen, Warden of the Adult Correctional Institution for the State of Rhode Island, and Mr. Paul Keve, Director of Adult Corrections for the State of Delaware. Warden Mullen expressed fear about the possible consequences of union organization.[8]

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[7] Remick, Peter. *In Constant Fear*. (Reader's Digest Press 1975)

[8] In his deposition, Warden Mullen testifies:

Q: Do you find any exploitation of one group of inmates by another, say the younger inmates exploited by the older inmates, or the long-termers exploiting the short termers?

A: We had the young inmates break away from the older inmates, and to us, the two words that were mentioned, the

young inmates wanted to form what was called the Youth Commission, and they wanted to break away from the, what they called the over the hill gang.

Now, This is gospel truth, and this happened within the last year. The unfortunate part about it, that the young inmates didn't realize how super-violent, or they didn't believe what they read or heard about some of the older guys.

We had 40 members of the Young Commission stabbed. There was no more Youth Commission, no more problems. People had been arrested and charged within the institution, and that has been the end of any of that type of thing. We did have these young guys attempt to break loose from the older inmates by verbal threats or by verbal abuse, and they were handled by the older inmates without regard to prosecution or whatever. It was done openly and it was done in 5 minutes. The Youth Commission was in ruins.

Q: When you say the older inmates, would you also characterize them as the Reform Association?

A. I would say so, because my experience with them, you know, they've been through the training schools, they've been here before. They have served time in other prisons, yes.

Q. So in other words, any time you have a maverick organization, the organization which pre-exists, will attempt to quash it?

A: Yes, sir. (A pp. 69, 70).

Warden Mullen, whom the Three-Judge Court characterizes as an expert who has concluded that the National Prisoners' Reform Association at his institution "is going in a positive direction" further testifies, concerning the North Carolina situation as follows:

A: . . . [t]hat as far as the union is concerned, I, you know, I think it's dangerous, and again, I only——I can't discuss my situation, because I only can talk about 600, and you're talking about 13,000.

I think in looking at the picture of that situation, you know, at any given moment, through any type of

Mr. Keve had no opinion.[9]

In some instances, the fear of prison administrators in the record of this case was based on concrete facts–i.e., riots

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communication, you could have your hands full. If the word was given that a prison in Raleigh that––I don't even know if there is one there––that at 12:00 tomorrow, boys, we don't move. We just sit there. The State of North Carolina is in big trouble. You know, you'd have to get the Army to straighten it out for that violence in such an area, so spread out, you know, in that span, you know. It scares me.

The situation here, you know, it's a little different. The State Police Barracks is right here. The National Guard Armory is 3 miles away. So, you know, I'm working at an entirely different ballgame. I think if you ever had anything that was organized, I don't think you'd have––well, I wouldn't say 13,000 people go beserk at once, because you're not going to get 100% from everybody, but I do think that looking along the lines of the type of facilities that you have, and I don't know the type of units and special offenders prison, I don't know. I think you'd have some super problems.

(A pp. 73, 74).

[9]In his deposition, Paul Keve testifies:

Question: What is your view in general towards the organization or the existence of inmate organizations similar to the plaintiff organization as you understand it? Do you have an opinion:

Answer: Yes. I have some opinions. There are all kind of inmate organizations and inmate organizations of one kind or another have existed for a long time, but the idea of the Union as a specific kind of organization is very very new. *And at this time it has not proven itself very well one way or the other in the general field of corrections.* (Emphasis added.)

(A pp. 79, 81).

that have occurred in the past.[10] Others are based on logic and common sense. Obviously, where an inmate organization has no bargaining power, its only source of strength is militancy. This Court has recognized that prisoners employ "illegal and very violent means to obtain their ends" *Wolff v. McDonnell*, 418 U. S. 539, 560 (1974). Cf. United States ex rel *Miller v. Twomey*, 479 F. 2d 701, 716 (7th Cir. 1973); and that "it is against this background that constitutional judgments must be made." *Id.* The fears of Secretary Jones and Director Edwards are not unfounded and this Court should not interfere with their legitimate attempts to prevent disorder.

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[10]Although Mr. Keve supports "the Union model" in corrections, he describes the causes of the riot at Central Prison in Raleigh, North Carolina, on April 18, 1968, as follows:

Q: You are aware that the riot occurred when Mr. Bounds was attempting to regain control from the so-called "bulls of the yard." The prison bosses, are you not?

A: Yes.

Q: And that a very sophisticated business has been developed by a few individuals at Central Prison?

A. Right.

Q: And that when Mr. Bounds attempted to take away an extremely profitable business from the individuals they completely took control over the inmate population and resulted in a riot?

A: Right.

Q: Is this not an example of what can happen when certain prisoners gain power in a penal institution?

A: Yes, it is an excellent example of that.

Q: And their power was for personal aggrandizement rather than the good of the institution?

A: That is right.

(A pp. 79, 102).

(B) THE ANALYSIS EMPLOYED BY THE LOWER COURT IN THIS CASE IS INCONSISTENT WITH PELL V. PROCUNIER, 417 U. S. 917 (1974).

In *Pell*, this Court held that California's absolute prohibition to face to face interview between press representatives and individual specifically named inmates that they requested to interview did not violate the constitutional rights of the inmates involved. This Court began its analysis by stating the "familiar proposition that lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Pell,* supra, at 822 citing *Price v. Johnston*, 334 U. S. 266, 285 (1948). The Court then acknowledged that a prisoner retains certain First Amendment rights "not inconsistent with his status as a prisoner or with the legitimate penological objectives of the penological system." *Ibid.* Thus, challenges to prison regulations restricting First Amendment rights "must be analyzed in terms of the legitimate policies and goals of the corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law." Two of the goals discussed are rehabilitation of prisoners and internal security of prisons.

> . . . Since most offenders will eventually return to society, [a] paramount objective of the corrections system is the rehabilitation of those committed to its custody. Finally, central to all corrections goals is the institutional consideration of internal security within the corrections facilities themselves. *Id.* at 823.

Again, the Court reemphasized that "it is in light of these legitimate penal objectives that a court *must* assess challenges

to prison regulations based on asserted constitutional rights of prisoners." *Ibid.* (Emphasis added.)

For the reasons explained in detail below, we believe that the Three Judge Court totally disregarded the institutional goals of security and rehabilitation. Apparently, the principle security concern advanced by California correctional officials in *Procunier* and federal correctional officials in the companion case, *Saxbe v. Washington Post*, was the so-called "big wheel" phenomenon. See *Saxbe v. Washington Post,* 417 U.S. 850, 868 (1974) (Powell, J., dissenting). Officials argued that inmates allowed interviews with press representatives might obtain notoriety and status among their other fellow inmates. As leaders, they could encourage others to violate institutional rules. California officials also specifically mentioned that a riot that had occurred at San Quentin might have been caused by reporters' interviews with the "big wheels" within the population who used their status to organize the rioters. This Court recognized that the fears expressed were "legitimate" and upheld the absolute ban in "light of the alternative means of communication permitted under the regulations."[11] *Pell,*

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[11] The following reasonable and effective means of communication are available to the inmates of the North Carolina Department of Correction:

(1) Visitation:
5 N C A C 2 D.0201 GENERAL
(a) Introduction. Visiting performs a vital function in the rehabilitative process and should be as free and open as custodial considerations permit. Inmates should be encouraged to maintain close contact with members of their families, desirable friends, and others through visitation privileges.

(2) *Correspondence:*
5 N C A C 2 D.0301 *Inmate Use of the Mails*
(a) Inmates may write to anyone . . .

Supra at 823 citing *Kleindeinst v. Mandel*, 408 U. S. 753, 765 (1972). Justice Powell dissented due to his concern over the right of access by members of the press. He specifically noted, however, even though the Bureau would "be put to a heavy burden of justification" for barring reporters

> It does not follow that the Bureau is under the same heavy burden to justify any measure of control over press access to prison inmates. Government regulation that has no palpable impact on the underlying right of the public to the information needed to assert ultimate control over the political process is not subject to scrutiny under

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(3) *Public Communications*
5 N C A C 2 D.0502 *Access Procedure*
(d) To Prisoners

(1) Visitors may be permitted to talk to inmates of the State prison system who are willing to talk to them. The time, place, and manner of such conversations shall be subject to restrictions appropriate to the parties and circumstances.

(2) Media representatives may be permitted to interview inmates of the State prison system who consent in writing to be interviewed for a stated purpose and without compensation . . . .

(4) *Inmate Grievance Procedures*
N. C. G. S. §148-101 et seq., *Inmate Grievance Commission*
The Inmate Grievance Commission is established as a separate agency within the Department of Correction. It shall consist of five members appointed by the Governor from a list of 10 persons recommended by the Council of the North Carolina State Bar. . . .

5 N C A C 2G.0301 *General*
The Inmate Grievance Procedure is designed to provide efficient administrative procedures for the resolution of complaints. The Division of Prisons seeks to reduce tension and provide a stable rehabilitative atmosphere by providing formal channels for communication of complaints. . . .

> the First Amendment. Common sense and proper respect for the constitutional commitment of the affairs of state to the legislative and executive branches should deter the judiciary from chasing the right of access rainbows that an advocate's eye can spot in virtually all governmental actions. *Saxbe v. Washington Post*, supra at 872, Powell, J., dissenting.

In the case before this Court, the lower court failed to consider alternative means of communication and did not acknowledge the correctional goals of maintenance of internal security and rehabilitation. It paid lip service to *Pell* by noting that prisoners retain certain First Amendment rights. It said no more.

The security interests appearing in the record of this case have already been set out and it is unnecessary to discuss them in depth here. Briefly, it should be noted again that the inmate Union will create friction between inmates and staff.[12] Long term inmates with different interests than short term inmates might force their interests on others creating a possibly uncontrollable situation.[13] Thus, some inmates will

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[12] See Edwards v. Sard, 250 F Supp. 977, 981 (1966).

[13] In *Paka v. Manson*, supra at 119-120, the Court summarized the testimony of John R. Manson, Commissioner of Corrections in Connecticut, as follows:

> Commissioner Manson was strongly opposed to the formation of a prisoners' union at Somers. Based upon his experience as Commissioner and his observations. . . he was of the opinion that inmates serving long sentences would exert undue influence over short term prisoners and would act as self-appointed 'power brokers' in negotiations with prison officials. Somers is the maximum security prison in the State of Connecticut and contains a higher portion of "violence

become power figures with special authority, special rights, and special powers. In short, they will become power brokers capable of imposing their will on the inmates and staff.[14] In addition to all this, logic and common sense lead to the conclusion that if an organization of prisoners has no bargaining power, its only source of strength is militancy.[15]

The security considerations in the record of this case can be compared to those mentioned by California officials in *Pell*. In fact, the security considerations pressed here are even more urgent. Certainly, the "big wheel" becomes a more serious problem where he has a viable organization of soldiers

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cases" than the other detention institution. Every one of the named Plaintiffs in this case are serving long terms, and some may be there for the rest of their lives. (See fn. 16, infra.) The typical inmates, who comprise about ninety percent of the prison population, usually spend no more than twelve months in the prison. In contrast to the long termers, who have little to lose by being obstreperous, these typical inmates are especially cooperative and well behaved in order not to jeopardize their privilege of earning good time and obtaining early release. Their principle interest is to get out as quickly as possible. Because of this difference in the objectives of the two groups, the Commissioner feared not only a distortion of any system of elected representatives in a union, but also the use of pressure, physical coercion, and intimidation against short term prisoners in the organization or operation of a union. While there is no sure way to predict the behavior of prisoners, that there is a valid basis for such fears has been expressly recognized by the Court in *Wolff v. McDonnell*, 418 supra at 560.

[14] See fn. 10, supra.

[15] See fn. 18 in *Paka v. Manson*, supra at 123. Cf. *Blue v. Hogan*, supra.

to support him and enforce his demands. Still, the Three Judge Court gave no weight to these considerations.

The Union presses its constitutional right to petition the government and speak out on issues formally. Significantly, prisoners also asserted such a right to petition for redress of grievances in *Pell*. In reply to this contention, this Court noted that "the alternative means of communication with the press that are available to prisoners, together with the substantial access to prisons that California accords the press and other members of the public, satisfied whatever right the inmates may have to petition the government through the press." *Pell*, supra, fn 6 at 828-39. As noted in fn. 11, the State of North Carolina provides these alternative means. Inmates are allowed to write to anyone, including members of the press and government officials. They may have visitors consistent with security requirements. Reporters are allowed to interview specific inmates subject only to time, place, and manner restrictions. Inmates are provided with an internal grievance mechanism subject to scrutiny by an outside Inmate Grievance Commission and judicial review by the state courts. For these reasons, unless *Pell v. Procunier* is to be overruled, this Court must decide in favor of the State in this case.

The lower court and the Union make much of the fact that there was not "one scintilla of evidence" to indicate that the Union would pose an immediate danger to security. Apparently, the Three Judge Court would have the state await an overt act, a disturbance such as the riot that occurred at Central Prison in 1968 before squelching the Union. Since the Union members had not been allowed to meet or solicit, no such evidence was available. The Union had not been able to establish a power base. More important, *Pell* does not require the State to obtain "evidence" before acting. After "evidence" is obtained, security precautions have already been broken down. *Pell* recognized legitimate security interests

raised by prison officials. The Three Judge Court did not. Its failure was unmistakably erroneous.

(C) THE DECISION OF THE THREE JUDGE COURT IS CONTRARY TO OTHER CASES INVOLVING PRISONERS' RIGHT TO ASSOCIATE DECIDED BEFORE AND AFTER PELL.

Additional guidance in making an analysis of whether the restriction challenged in this case is inconsistent with status as a prisoner may be derived from other cases adjudicating the legality of restraints on the associational rights of prisoners. In upholding the dismissal of the prisoner's action alleging that his right to privacy was violated by monitoring his conversations with prisoners, the Court in *Christman v. Skinner*, 468 F. 2d 723, 726 (2nd Cir. 1972), quoted from *Lanza v. New York*, 370 U. S. 139, 143 (1962), " 'that a jail shares none of the attributes of the privacy of a home, an automobile, an office or hotel room.' " Protection of privacy does not extend to the inmates of a prison confined there after a due process determination that they have violated criminal laws and conviction of crime carries not only loss of liberty, but other impairments associated with membership in a closely supervised prison community. The range of free activity for prisoners within the prison is relatively small. Despite the prominence of the right of association among the constitutional rights enjoyed by citizens, it is clear that a convicted felon, even after he has been released from prison on parole, may have substantial restrictions placed upon his associational relations with other persons. In illustrating the extent to which a parolee's liberty may be curtailed, the Court in *Hyser v. Reed*, 318 F. 2d 225, 239 (D. C. Cir. 1963) said:

> The United States cannot constitutionally impair a citizen's right to leave the District of Columbia or frequent pool halls, but it can do so to Hyser and other appellants [parolees] whose freedoms have been substantially abridged in accordance with the requirements of due process.

Freedom to worship collectively which is an associational right explicitly protected by the Free Exercise Clause of the First Amendment may be curtailed if it threatens prison discipline or security. *Sharp v. Sigler*, 408 F. 2d 966 (8th Cir. 1969); *Knuckles v. Prasse*, 302 F. Supp. 1036, 1056-1058 (E. D. Pa. 1969), aff'd, 435 F. 2d 1255 (3rd Cir. 1970), cert. denied, 403 U. S. 936 (1971).

Perhaps the best example of this type of legitimate curtailment occurred as a result of prisoners' efforts to organize the Church of the New Song or CONS. The history of CONS is reviewed in detail in *Theriault v. Carlson*, 339 F.Supp. 375 (N.D. Ga. 1972) and *Theriault v. Carlson*, 495 F. 2d 390 (5th Cir. 1974). CONS was founded by federal prisoners Harry W. Theriault and Jerry M. Dorrough, at the federal prison at Atlanta, Georgia. Theriault acquired his Doctor of Divinity Certificate through a mail order application. He then appointed himself as "Bishop of Tellus" and ordained Dorrough as "First Revelation Minister." In extensive hearings in the Northern District of Georgia, Theriault and Dorrough testified at length in regard to the source, history, and tenets of CONS, acknowledging that Theriault had started it off as a game. The statement of Dorrough quoted in *Theriault v. Carlson*, supra at 394, relative to the basic purpose of CONS is as follows:

> In our Free Exercise Seminars, our revelation ministry is basically to destroy the Nicolaitans which we believe are the repressive rulers and the powercrats of the system. That means–meaning the prison system, the people in the prison system, the people in the parole system, the people in government in general, the judiciary, et cetera. And we believe in destroying them or changing their minds with the power of our mouth.

The United States Court of Appeals for the Fifth Circuit reviewed the holding of the district court in *Theriault v. Carlson*, 339 F. Supp. 375 (N. D. Ga. 1975) and remanded with instructions to the Court "to decide whether the beliefs professed by [the prisoners] are sincerely held and whether they are in [their] own scheme of things, religious." On remand, the district court in *Theriault v. Silber*, 391 F. Supp. 578 (W. D. Texas 1975) held that CONS is not a religion within the scope of the First Amendment and is not entitled to First Amendment protection as a religion. In reaching its holding the district court stated:

> The Church of the New Song appears not to be a religion, but rather as a masquerade designed to obtain First Amendment protection for acts which otherwise would be unlawful and/or reasonably disallowed by the various prison authorities but for the attempts which have been and are being made to classify them as "religious" and, therefore, presumably protected by the First Amendment.
>
> Rather than urging upon its followers any particular theology or philosophy of life, the Church of the New Song appears to encourage a relatively non-structured free-form, do-as-you-please philosophy, the sole purpose of which is to cause or

> encourage disruption of established prison discipline for the sake of disruption. Disruption of and/or problems for prison authorities is not the *result* of this co-called religion; it is rather the underlying *purpose* of it . . .
>
> Petitioner and his cohorts have formed an organization whose purpose is to improve the position of member prison inmates vis-a-vis the prison administrations. To obtain leverage for the organization and to enable it to operate more freely within the Federal Penitentiaries, petitioner has christened it a "religion" and endowed it with the trappings thereof. Thus, it is that the unmistakeable stench of the skunk is found emanating from that which petitioner has declared a rose.

Interestingly, Wayne Brooks, Frank Strader, and Vernon Rich, who identify themselves as members and organizers of the North Carolina Prisoners' Labor Union in the Union's Newsletter No. 1 attached to its Complaint, filed a lawsuit in the Eastern District of North Carolina alleging that they had rights to meet and organize as the Church of the New Song. Brooks alleged that he had been ordained as a "Revelation Minister" by the Atlanta Branch of CONS. The Honorable Algernon Butler, Senior District Judge, granted the State's Motion for Summary Judgment.[16] *Brooks v. Edwards*,

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[16] In *Brooks*, W. L. Kautzky, Deputy Director of the North Carolina Division of Prisons presented the following information concerning the background of Brooks, Rich and Strader in a sworn Affidavit:

> Mr. Wayne Brooks began his contact with the Criminal Justice System in 1951, and has since graduated through a variety of serious offenses ranging from violations of the Narcotic Act to Breaking and Entering and Safecracking. The F. B. I. record encompasses four pages with prison records.

74-362-CRT (E. D. N. C. 1975). The District Court's Memorandum Decision quoted from *Theriault v. Silber*, supra,

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He was in prison in Georgia, paroled, and revoked after absconding. He was later sentenced in North Carolina for Breaking, Entering and Larceny, and Possession of Burglary Tools. He was paroled in North Carolina, absconded to Florida, where he received a 20 year sentence for Grand Larceny. He escaped after seven years and returned to North Carolina where he was convicted of Possession of Burglary Tools and received 10 years. He claims an active interest in program participation and has laid claim to a Constitutional right to rehabilitation. His claim is that the detainer from the State of Florida prevents his rehabilitation. In April 1974, Mr. Brooks was found guilty by a Disciplinary Committee of stabbing another inmate and was found guilty of disobeying a prison offical in October of 1974. When he was transferred to Central Prison after the stabbing incident, a knife was found hidden in a secret compartment of a jewelry box he had in his possession. Mr. Brooks identifies himself in certain newspaper articles as the president of the North Carolina Inmate Labor Union. Based on this cross section of demonstrated behavior during incarceration, it is most difficult to view his participation or interest in the Church of the New Song as a credible goal.

Mr. Rich began a life sentence for First Degree Murder in May of 1969, and apparently developed an interest in the Church of the New Song upon returning to Central Prison following an escape in April of 1974. As an index of Mr. Rich's trustworthiness, he was able to remain in Honor Grade only ten months before escaping to Atlanta, Georgia. When Mr. Rich entered the Correctional System in 1969, he disclaimed any direct relationship with a religious body. During the time which subject was known to the writer personally while housed at the Mecklenburg II Subsidiary, no interest in religious activity was suggested or intimated. The

indicating that the purpose of CONS was to form an organization that "would be unlawful and/or reasonably disallowed by various prison officials." If prison administrators can prohibit formation of a "Church of the New Song," they can certainly prohibit a prisoners' labor union.

II. THE STATE'S REFUSAL TO PERMIT MEETINGS AND SOLICITATION OF MEMBERS BY THE NORTH CAROLINA PRISONERS' LABOR UNION DID NOT DEPRIVE THE UNION OF EQUAL PROTECTION OF THE LAWS.

In *Ross v. Moffitt*, 417 U. S. 600, 612 (1974), this Court said:

> "Despite the tendency of all rights 'to declare themselves absolute to their logical extreme,' there are obviously limits beyond which the equal

---

genesis of Mr. Rich's interest in religious activities would appear to be specifically related to the development of an organization for the purposes of confrontation with prison administration.

Mr. Strader began his contact with the Criminal Justice System in 1959, and has progressed through various federal violations (Dyer Act) which eventuated in a Second Degree Murder charge in 1969, resulting in a 25-30 year sentence. In June 1970, Franklin Strader held a gun on a correctional officer in a hijack of a prison bus in an escape. Mr. Strader escaped in April of 1974... His prior record suggests two previous escapes, a period of Indefinite Nonpunitive Segregation and four major infractions during an approximately five year period...

> protection analysis may be pressed without doing violence to the principles recognized in other decisions of this Court. The Fourteenth Amendment 'does not require absolute authority or precisely equal advantages.' "

Although *Ross* is set in a different context, the conclusion reached is equally applicable here. As we have clearly indicated, the holding of the Three Judge Court is totally inconsistent with *Pell v. Procunier*. For that reason alone, the Union's equal protection claim is without merit.

The State differentiated between the North Carolina Prisoners' Labor Union and the Jaycees, Alcoholics Anonymous, and the Boy Scouts of America because these organizations had recognized rehabilitative purposes. As Director Edwards testified in his affidavit:

> The Complaint charges that the Inmate Labor Union is denied equal protection of the laws in that the Junior Chamber of Commerce and Alcoholics Anonymous are permitted within the prison system. I should first point out that these are the only two private organizations which are allowed to function in the North Carolina Prison system. They are permitted to operate because they have been found to demonstrate legitimate rehabilitative purposes and to fill the needs of the inmates. They both operate under specific guidelines and their activities are regulated.
>
> * * *
>
> The goal of the Alcoholics Anonymous Program is also adapted from the program structure of an organization outside the confines of the prison system. The objectives of the Alcoholics

> Anonymous program are to provide therapeutic support, insight, and an opportunity for productive sharing of experiences among those who have encountered the deteriorative effect of alcoholism. Alcoholics Anonymous is structured on a peer pressure basis which begins while the individual client is confined and is intended to have carry-over effects into Alcoholics Anonymous groups in the free community.
>
> Prior to the development of Alcoholics Anonymous programs, it was necessary that the design of the program and the intended goals were justifiable within the confinement facilities of this State. The goals and the objectives of both the Alcoholics Anonymous and the Jaycee program were presented to correctional staff as meaningful courses of action with positive goals relative to productive restoration of offenders to active, lawful participation in the community. The goals of both organizations were scrutinized, evaluated, and approved. Operational guidelines have been drawn up in each instance following approval to certify that the primary objective of the correctional system—to maintain order and security—would not be abridged by the operation of these programs within the confines of the prison units. (A pp. 124-126).

The potentially destructive purposes of an inmate union have been noted. Again, even if a union might be originally intended as a peaceful way of channeling grievances, it can quickly become violent. Where an organization has no power, the inevitable result is collective action—a strike or a more serious disturbance. Nevertheless, the lower court upheld the Union's claim that since the State allowed the Jaycees,

Alcoholics Anonymous, and the Boy Scouts of America to function within its prisons, it must also allow the prisoners' union. It would apparently require the State to prohibit useful rehabilitative programs if it wanted to prohibit a prisoners' union or any other "inmate organization." The lower court obviously failed to recognize the Department's rehabilitative goals in spite of the mandate of *Pell* discussed above.

As this Court noted in fn. 10 in *Greer v. Spock*, ____ U. S. ____, 96 S. Ct. 1211, 47 L. Ed. 2d 505 (1976):

> The fact that other civilian speakers and entertainers had sometimes been invited to appear at Fort Dix did not of itself serve to convert Fort Dix into a public forum . . . The decision of the miliary authorities that a civilian lecture on drug abuse, a religious service by a visiting preacher . . . or a rock musical concert would be supportive of the military mission of Fort Dix did not leave the authorities powerless thereafter to prevent any civilian from entering Fort Dix to speak on any subject whatever.

The Union also claims that the admission of certain outside groups does compel the admission of others. In *Paka v. Manson*, supra at 124, the Court specifically addressed this particular equal protection issue.

> [a]nother possible equal protection claim is that if certain group activities are permitted within a prison, then it is arbitrary and capricious not to permit inmates to engage in any other kind of group activity they may choose. However, organizations like the Jaycees which are allowed to meet within the prison have functions which are different from those of the proposed union. The

> Jaycees at Somers conduct charity drives and assist in maintaining the canteen. The specific purpose of the proposed union is to bring to the surface, for collective action, grievances and complaints of the prisoners. The restriction on a state not to deny equal protection does not leave it without permission 'to recognize degrees of harm' and to 'confine its restrictions to those classes of cases where the need is deemed to be clearest.' Being allowed to participate in a permitted kind of group activity is not to be equated with participation in making the determination of what group activities shall be permitted. The nature of the organization of the proposed union, and its contemplated purpose of direct participation with prison authorities in shaping administrative policy, provides a reasonable basis for distinguishing the activities of the proposed union from the kind of inmate participation afforded in the Jaycee program.

Thus, the Court found the claim was not meritorious. Yet the Three Judge Court would require the State to develop "evidence"–i.e., concrete facts to indicate that an organization was dangerous, before barring it. Again, that logic is fundamentally inconsistent with *Pell* and numerous other cases decided by this Court. Cf. *Paka v. Manson*, supra; *Blue v. Hogan*, supra.

III. THE STATE'S REFUSAL TO ALLOW MULTIPLE DISTRIBUTION OF THE NEWSPAPER OF THE NORTH CAROLINA PRISONER'S LABOR UNION WAS NOT UNCONSTITUTIONAL.

The lower court also upheld the Union's claim that since Alcoholics Anonymous and the Jaycees were allowed full meeting privileges, the Union also had to be allowed to have

such privileges. For the reasons stated above, this equal protection claim is also without merit. The Union has no right to actively function within a prison. *A fortiori*, it has no right to distribute its leaflets.

It should also be noted that this Court specifically excepted "mass mailings" from its decision recognizing the rights of outsiders to communicate with prison inmates. See *Procunier v. Martinez*, 416 U. S. 396, 408, fn 11 (1974). The Court recognized "that different considerations come into play there." Although this Court said that it intimated no view on the subject, it appears unlikely that it would have bothered to specifically except "mass mailings" unless stiffer standards would be applied under these circumstances. Otherwise, there is no reason at all for making an exception. The security problems that can result from "mass mailing" as opposed to "piece mail" are apparent. First, material mailed in mass obviously makes inspection more difficult and facilitates mailing of contraband. Second, and more important here, material that could not be considered a threat to order and security when communicated to one inmate, often becomes a legitimate threat when passed throughout the inmate population. Widespead circulation of publications can provide a base for collective action such as strikes or riots. In *Paka v. Manson*, supra at 126, the Court held that prison officials could prevent mass mailing of leaflets.

> Stencils or multiple copies of [Union materials] could only have been intended for distribution among inmates within the prison and as a tool towards organization of a union that I have already held may be properly prohibited by the prison authorities. To the extent that multiple copies necessarily imply distribution to a group, they involve different risks to the security of the institution than the individual prisoner reading the by-laws of the prison union in his cell. It is true, of course, that both activities look toward a goal which has been properly prohibited—the formation of a prisoners' union. However, the activity that involves distribution to a group, raises much more forcefully the risk of agitation and unrest that prison administrators may legitimately seek to combat.

Finally, published personal attacks on correctional officers are much more likely to set apart inmates and officers than letters. Officers do not know what letters contain, but they do read publications and these can cause confrontations. As noted, in prisons, "guards and inmates coexist in intimate contact. Tension between them is unremitting. Frustration, resentment and despair are commonplace." *Wolff v. McDonnell*, supra, at 560. Thus, libelous publication of fighting words can and do provoke violence.

Finally, as Mr. Justice Stewart points out in *Greer v. Spock*, supra:

> The guarantees of the First Amendment have never meant "that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please."

CONCLUSION

The problems of prison management have been properly described as "complex and intractable, * * * not readily susceptible of resolution by decree," a fact which finds expression in "a broad hands-off attitude towards problems of prison administration" as adopted "traditionally," by "federal courts." *Procunier v. Martinez*, supra. After all, "courts possess no expertise in the conduct and management of correctional institutions." *Finney v. Arkansas Board of Correction*, 505 F. 2d 194 (8th Cir. 1974). Because of this want of judicial expertise, "prison officials must be accorded latitude in the administration of prison affairs," *Cruz v. Beto*, 405 U. S. 319 (1971) *Frazier v. Ciccone*, 506 F. 2d 1022 (8th Cir. 1974), and their judgments are entitled to "great weight" *Ross v. Blacklege*, 477 F. 2d 616 (4th Cir. 1973). Particularly "[W]here state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities." *Procunier v. Martinez*, supra.

It is submitted that the decision of the Three-Judge District Court in this case is a misreading of *Pell v. Procunier*, supra, and *Cruz v. Beto*, supra. Moreover, it is contra to *Paka v. Manson*, supra and *Blue v. Hogan*, supra. In holding the First Amendment and the Equal Protection Clause of the Fourteenth Amendment applicable to the facts of this case, the District Court has emasculated the administrative discretion of prison authorities and created an intolerable situation in which they must exercise their responsibilities.

Respectfully submitted,

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Attorney General

Jacob L. Safron
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Ben G. Irons, II
Associate Attorney

APPENDIX

5. Prisoners Should Be Encouraged To Organize For The Right To Collectively Bargain For Better Conditions, Higher Wage Scales, And For Their Own Personal Well-Being.

AUTHORIZATION FOR REPRESENTATION
By The
N. C. PRISONERS' LABOR UNION
835 West Morgan Street
Raleigh, North Carolina 27603

Having jurisdiction over the classification of work done by me:

Name _____ Address _____

Number _____ Prison Unit Number _____

Class of Work Done _____

VERIFICATION

I hereby authorize the agents or representatives of said Union to represent me and to act as a collective bargaining agent in all matters pertaining to rates of pay, hours of employment and all other terms and conditions of incarceration.

Date _____ Signature _____

Please mail this authorization slip to the Union's outside post office box as follows: N. C. Prisoners' Union, P. O. Box 2842, Durham, N. C. 27705

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 75-1874

DAVID L. JONES, SECRETARY OF THE
NORTH CAROLINA DEPARTMENT OF CORRECTIONS,
RALPH EDWARDS, COMMISSIONER OF THE
NORTH CAROLINA DEPARTMENT OF CORRECTIONS,
Appellants,

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC.,
ON BEHALF OF ITSELF AND ALL ITS MEMBERS,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

BRIEF FOR APPELLEE

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Counsel for Appellee

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INDEX

	Page
Table of Citations	iii
Opinion Below	1
Jurisdiction	2
Questions Presented	3
Constitutional and Statutory Provisions Involved	3
Statement of the Case	4
Proceedings Below	4
Statement of Facts	5
Summary of the Argument	18
Argument	
I. The Regulation prohibiting inmates from soliciting other inmates to join the North Carolina Prisoners's Labor Union violated First and Fourteenth Amendment right of association principles.	20
A. The state failed to carry its burden of proving a substantial correctional interest to overcome the prisoners' constitutional rights.	21
B. Adequate alternatives to the Union by which the prisoners can advance their legitimate goals are not available.	34
II. The banning of Union membership solicitation, meetings and bulk newsletter distribution violates Fourteenth Amendment equal protection principles.	41
A. The Prisoners' Labor Union members are entitled to be treated equally with members of other inmate organizations.	41
B. The equal treatment mandated by the District Court was an appropriate prophylactic measure to prevent rampant violation of the prisoners' correspondence, reading and judicial access rights.	49
Conclusion	53

TABLE OF CITATIONS

CASES:	Page:
Aikens v. Lash, 390 F. Supp. 663 (N.D.Ind. 1975)	51
Battle v. Anderson, 376 F.Supp. 402 (E.D.Okla. 1974)	51
Brotherhood of R. R. Trainmen v. Virginia State Bar, 377 U.S. 1 (1964)	20, 38
Butler v. Preiser, 380 F.Supp. 612 (S.D.N.Y.)	22, 28
Cooper v. Pate, 378 U.S. 546 (1964)	41, 45
Cruz v. Beto, 405 U.S. 319 (1972)	41, 45
Ex parte Hull, 312 U.S. 546 (1961)	21, 38
Fincher v. Scott, 352 F.Supp. 117 (M.D.N.C. 1972)	40
Fortune Society v. McGinnis, 319 F.Supp. 901 (S.D.N.Y. 1970)	22, 23
Goodwin v. Oswald, 462 F.2d 1237 (2d.Cir. 1972)	22

Gray v. Creamer, 376 F.Supp. 675 (N.D.Pa. 1974)	51
Greer v. Spock, 424 U.S. 828 (1976)	44
Healy v. James, 408 U.S. 169 (1972)	20, 21, 25
Hopkins v. Rollins, ___F.2d ___ (4th Cir. No. 76-1564, Jan. 28, 1977)	51
Johnson v. Avery, 393 U.S. 483 (1969)	21, 36, 38
Laaman v. Hancock, 351 F.Supp. 1265 (D.N.H. 1972)	51
Lee v. Washington, 390 U.S. 333 (1968)	41
McCleary v. Kelly, 376 F.Supp. 1186 (M.D.Pa. 1974)	51
NAACP v. Alabama, 375 U.S. 449 (1958)	20, 36-37
NAACP v. Button, 371 U.S. 415 (1963)	20, 38
National Prisoners' Reform Ass'n. v. Sharkey, 347 F.Supp. 1234 (D.R.I. 1972)	22, 28

Niemotko v. Maryland, 340 U.S. 268 (1971) 41

O'Brien v. Skinner, 414 U.S. 524 (1974) 41

Paka v. Manson, 387 F.Supp. 111 (D.Conn. 1974) 22, 27-29

Pell v. Procunier, 417 U.S. 817 (1974) 20, 21, 23-25, 27, 34-35, 39-40

Price v. Johnson, 334 U.S. 266 (1948) 20, 40, 42

Procunier v. Martinez, 416 U.S. 396 (1974) 19B, 21, 24-25, 32-34, 45, 50-51

Ramirez v. Richardson, 418 U.S. 24 (1974) 40

Ross v. Moffitt, 417 U.S. 600 (1974) 39

Saxbe v. Washington Post Co., 417 U.S. 843 (1974) 30

Shelton v. Tucker, 364 U.S. 419 (1960) 32

Smith v. Bounds, No. 75-915 39

Sostre v. McGinnis, 442 F.2d 178 (2d. Cir. 1971) 39

Sostre v. Otis, 330 F.Supp. 941 (S.D.N.Y. 1971) 51

Tinker v. Des Moines Community School District, 393 U.S. 503 (1969) 25

United Mine Workers v. Illinois State Bar Assn., 389 U.S. 217 (1967) 20, 38

United Transportation Union v. State Bar of Michigan, 401 U.S. 576 (1971) 20, 38

CONSTITUTIONAL PROVISIONS:

Constitution of the United States, Amendment I 18-19, 20, 22-24, 30, 32, 40-41

Constitution of the United States, Amendment VI 16

Constitution of the United States, Amendment XIV 18, 19A, 20, 22, 23, 41-42, 44

STATUTES:

28 U.S.C. §1253 2

28 U.S.C. §1343 2

28 U.S.C. §2201 2

28 U.S.C. §§2281-2284 2

42 U.S.C. §1983 2

N.C.G.S. §§95-98 6, 31

MISCELLANEOUS:

Burger, Our Options are Limited, 18 Vill.L.Rev. 165 (1972) 40

Federal Prison System Policy Statement on Contact with News Media, No. 1220.1C (Jan. 17, 1977) 30

IN THE SUPREME COURT OF THE UNITED STATES
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DAVID L. JONES, SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS, RALPH EDWARDS, COMMISSIONER OF THE NORTH CAROLINA DEPARTMENT OF CORRECTIONS,
Appellants,

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC., ON BEHALF OF ITSELF AND ALL ITS MEMBERS,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

OPINION BELOW

The Memorandum Decision of the Three-Judge District Court for the Eastern District of North Carolina is reported at 409 F.Supp. 937 (E.D.N.C. 1976). A copy of the Memorandum Decision is set out in the Jurisdictional Statement (p. 20). Judgment in accordance with the opinion was entered on April 8, 1976. (Jurisdictional Statement 33-34).

JURISDICTION

This action was brought by the North Carolina Prisoners' Labor Union, Inc. on behalf of itself and all its members, seeking injunctive and declaratory relief and monetary damages with jurisdiction based on 42 U.S.C. sec. 1983, and 28 U.S.C. sec. 1343, 2201.

A three-judge district court was convened pursuant to 28 U.S.C. sec. 2281 to 2284 to consider the constitutionality of state-wide regulation issued by the Secretary of the North Carolina Department of Correction on March 26, 1975, forbidding solicitation of membership in inmate unions, negotiations and bargaining between correctional personnel and such unions, and the holding of meetings of such organizations on departmental property. (Jurisdictional Statement 37-38).

Judgment of the district court was filed on April 12, 1976. Notice of appeal by appellants was filed on April 26, 1976. (Jurisdictional Statement 35-36).

Jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. sec. 1253.

QUESTIONS PRESENTED

1. Does a regulation prohibiting prison inmates from soliciting other inmates to join a prison reform and self help organization violate First and Fourteenth Amendments right of association principles?

2. Does the banning of membership solicitation, meetings and bulk newsletter distribution by a prison reform and self help organization, violate Fourteenth Amendment equal protection principles, when these opportunities are accorded other inmate organizations with similar goals and activities?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, First Amendment. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Constitution of the United States, Fourteenth Amendment.
Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within the jurisdiction the equal protection of the laws.

Regulation of North Carolina Department of Correction, March 26, 1975. Set forth in Jurisdictional Statement 37-38.

STATEMENT OF THE CASE

PROCEEDINGS BELOW

This is an action for declaratory and injunctive relief and monetary damages by the North Carolina Prisoners' Labor Union, Inc. (sometimes referred to hereinafter as the "Union"), against David L. Jones, Secretary of the North Carolina Department of Corrections, and Ralph Edwards, Director of the Division of Prisons of the North Carolina Department of Corrections. Plaintiff claimed that its rights and the rights of its members to engage in speech, press, association and assembly activities protected by the First Amendment were deprived by the defendants, who refused to allow prisoners to solicit others to join the Union, refused to allow meetings of Union members, prevented bulk mailing of newsletters, withheld prisoner mail, and forbade paralegals suspected of Union activity to enter prison facilities, at the same time that the Jaycees and Alcoholics Anonymous are permitted to have chapter organizations, meetings, outside representatives, and bulk mailing privileges.

A three-judge district court was certified to pass upon the constitutionality of a state-wide regulation adopted on March 26, 1975, aimed at suppression of

the Union.

On March 16, 1976, the three-judge district court filed a Memorandum Decision finding the regulation to be unconstitutional and holding that (1) inmates and all other persons shall be permitted to solicit and invite other inmates to join the Union orally or by written or printed communication; (2) the Union shall be accorded the privilege of bulk mailing to the extent that this privilege is accorded other organizations of prisoners; and (3) the Union and its inmate members shall be accorded the privilege of holding meetings under such limitations and control as are applied to other inmate organizations. (Jurisdictional Statement 20, 32). On April 12, 1976, the Court filed a judgment incorporating the provisions of the Memorandum Decision and further providing that free persons otherwise entitled to visit with inmates shall not be denied access to them by reason of association or affiliation with the Union. (Jurisdictional Statement 33-34).

STATEMENT OF FACTS

At the outset it may be pertinent to consider what type of organization the North Carolina Prisoners' Labor Union, Inc., is. Appellants state that the district court was under a "misconception" as to the true nature of the organization,

and that counsel for appellee made a misrepresentation to the court that the Union was a prison reform organization and was not in the business of engaging in collective bargaining. (Appellants' Brief 6-7). The misconception, if any, is derived from appellants' own brief in the district court, wherein it is stated, "Apparently, the Plaintiff is not seeking to establish a national labor relations board type of labor union in the prison system. More accurately, what they want to form is an organized group of elected representatives of inmates within the prison to meet together, and to take their proposals, criticisms, suggestions and the like to the administration." (Defendants' Memorandum in the District Court 2).

True, the Union listed as one of its goals that of collective bargaining for inmates with respect to rates of pay, hours of employment, and other terms and conditions of incarceration. (Brief for Appellants A-1). Both sides of this case are fully aware that this type of collective bargaining would be contrary to a North Carolina statute, N.C.G.S. sec. 95-98, and at no time has appellee or its members taken any active steps to pursue this illusory goal. The thrust of the Union's activities has been that of a prison reform organization.

As stated in its charter, the Union exists to secure meaningful rehabilitation programs, to defend human and civil rights of prisoners, to arrange for community based support groups to appear before legislative bodies in the interests of prison reform, to educate the public through the publication of a union newspaper and through news releases, to retain attorneys for the protection of prisoners' legal rights, and for the advancement of prisoners' economic, political, social, and cultural interests. (Articles of Incorporation 2-3; A. 170-171).

The Union has approximately 2200 members in 40 different prison units throughout the State. The Union is operated under democratic principles with a majority of membership vote determining the actions and policies of the organization. It is a multi-racial organization, and the Board of Directors is composed of seven white persons, six black persons and one American Indian. (A. 170).

In spite of appellants' vigorous efforts to suppress the Union, the evidence is uncontradicted that the Union had attained a measure of racial unity at North Carolina's large Central Prison; that personal responsibility of the membership had been enhanced by their

participation in the democratic processes of the organization; and that the Union helped to build self-reliance among inmates by discussing problems of economic and racial tension, lack of education, lack of employment opportunities and by attempting to find peaceful and crime free alternatives to these problems. (A. 172-173, 166-167).

The March 26, 1975, administrative regulation dealing with the Union, which is the subject of this action, provided (1) inmates are prohibited from soliciting other inmates to join any inmate union, (2) a union may not make any use of Department of Correction property, (3) any person who enters a correctional unit for the purpose of union organizing shall be permanently excluded, and (4) correctional officers are prohibited from negotiating with an inmate union. (Jurisdictional Statement 37-38). Appellants specifically did not undertake to prohibit a union membership, as such, and before the District Court appellant's attorney agreed that they did not seek to interfere with the mere association of the inmates in the Union. (Jurisdictional Statement 22-23, 37).

Following the adoption of this regulation, the Department of Correction prohibited several activities and interfered with certain rights of prisoners

not expressly authorized by the regulation, but with the obvious purpose of eliminating the Union. First, by administrative regulation inmates are entitled to receive incoming mail, as long as it does not contain contraband, material that poses a clear and present danger to security, or material that can not lawfully be mailed. (A. 135-136). The March 26, 1975, regulation banned solicitation of members only by fellow inmates, not by non-prisoners. Nevertheless, numerous pieces of mail from Robbie Purner (a coordinator of Suruban Partner's Prison and Jail Project, who provided a great deal of outside assistance to Union members) addressed to inmates were intercepted by correctional personnel and mailed back to her without explanation, contrary to the standing regulation on mail. (A. 144-146).

Second, another Department of Correction regulation authorizes inmates to receive publications through the mail from publishers, allows inmates to exchange newspapers and other publications, permits publications to be rejected only if they pose a clear and present danger to prison security or are obscene, and establishes procedures for rejections including notice, opportunity to be heard, and impartial decision making. (A. 138-140). The March 26, 1975, regulation does not depart from the general rules about

publications, except to prohibit inmates from soliciting other inmates to join a Union. The Union publishes a bi-monthly newsletter. (A. 171). Contrary to the publication regulation, correctional officers intercepted the Union newsletters, and either returned them to the senders or disposed of them, without following the specified rejection procedures. (A. 143, 151-153, 154).

Third, paralegals were barred from visiting prisoners. Deborah Mailman, one of appellee's attorneys, employed two paralegals, Chuck Eppinette and Robbie Purner, to visit prisoners in connection with legal representation of the Union, as well as in connection with work being done by her as a private attorney for prisoners and as a cooperating attorney of the North Carolina Civil Liberties Union. (A. 157-163, 164). Appellants barred Ms. Mailman's paralegals from the prisons, based on suspicions that these individuals were acting as Union organizers instead of legal assistants. (A. 123-124, 130-133).

Appellants' reasons for seeking to outlaw the Union were that the Union could create a divisive element within the inmate population, inmate organizers could become power figures among the inmates, the Inmate Grievance Commission provides the inmates with a means of airing their

complaints, and work stoppages and mutinies, riots, and chaos could result. (A. 119-123, 127-130). These apprehensions were all of a speculative nature; neither appellants nor their witnesses pointed to any facts derived from the six preceding months of Union activity within the North Carolina correctional system, or to experiences in the prison systems of other jurisdictions, which lent any support to their fears.

Fred G. Morrison, Jr., the Executive Director of the Inmate Grievance Commission, a part of the Department of Correction, stated that he was familiar with the Union and had met with its organizers and officers. He was of the opinion that the Grievance Commission did not amount to a satisfactory alternative for the varied activities of the Union, and that the Union was no threat to the prison system:

> [I]t is my considered opinion that the North Carolina Prisoners' Labor Union, Inc., does not pose a danger to the North Carolina Department of Correction or the orderly administration thereof. I foresee no threat to rehabilitation or other prison programs,

nor do I believe that the prisoners' Union poses any threat to the jurisdiction or operation of the Inmate Grievance Commission. Rather I believe it would be beneficial if the prison administration were less fearful of the prospect of an inmate organization. It is my opinion that constructive change will be more likely to take place if there is cooperation from within the institutions, and this belief is reenforced by my observation of grievance procedures in other states. (A. 180-181).

Inconsistent with their professions that the Inmate Grievance procedure provided an adequate alternative to the Union, appellants recommended that the Inmate Grievance Commission be completely abolished. (A. 181-184).

The testimony of two expert witnesses is included in the record. Both witnesses have extensive experience with inmate reform or self-help organizations in other states, and both testified that such organizations have a positive influence in prisons and do not cause the

ill effects presumed by appellants.

James W. Mullen, Warden of the Rhode Island Adult Correctional Institution, testified that a prisoners' reform association had been operating within his institutions for four years. (A. 14-15). This witness does not regard himself as a reformer or an advocate of massive change; his priorities in order are security, discipline, and rehabilitation. (A. 17, 19-20). Warden Mullen feels that the organization is going in a positive direction, and he has no present desire to disestablish it. (A. 28-29, 46). The warden's meetings with the organization has relieved tension in the institution and created a healthy situation. (A. 77). If the organization did not exist, the warden would be forced to use a system of informers, which is a very dangerous alternative and can result in people getting severely hurt. (A. 38-39). The organization holds meetings in the institution with no prison guards present. (A. 21). The meetings are run by Robert's Rules of Order, and the members are very composed. (A. 25). Some institutional policy changes have arisen from ideas from the organization; one example is the institution's change in visiting room procedure. (A. 27). The Presidents of the organization have served various sentences, varying from life terms to terms of two years (A. 24).

The warden does not negotiate with the organization in the sense of collective bargaining, nor does he feel trapped into a situation where he might have to negotiate in that way. (A. 28). The warden is unable to associate the activities of the organization in any way with such things as violence, riots, or attempted riots. (A. 24). There is no evidence that the organization has caused work stoppages or strikes. (A. 48-50). The warden has received support and cooperation from the officers, directors and other leadership of the organization during times of tension or difficulty. (A. 52) There is a formal grievance procedure at the institution; however, the organization's concerns are broader than the grievance procedure encompasses. (A. 53). The organization publishes a monthly newsletter, and these are distributed in bulk within the institution. (A. 32-33).

The witness Paul W. Keve is Director of Adult Corrections for the State of Deleware. He conducted a study of inmate organizations at San Quentin Prison to see what effect the organization would have on prison management. His study showed that troubles at the institution did not stem from the inmate organization; that when a handfull of militant inmates attempted to take control of the organization, they failed and the other inmates proved capable of stabilizing the situation; and he

concluded that the problem of destructive convict bosses is directly attributable to weak, inexpert prison management, not to inmate organization activites. (A. 82-85). Mr. Keve believes that if an inmate organization provides an electoral structure and for democratic participation, it serves a rehabilitative purpose. (A. 93). This witness has concluded that prisoner unions are eventually coming to all systems, and correctional administrators should accomodate themselves to these organizations. (A. 92). An inmate organization has existed in the Delaware Corrections System for three years. This organization has in no way endangered the security of the system, and there have been times when it helped materially to stabilize the situation. (A. 95).

Appellants have allowed two inmate organizations to operate within the prison system, the Junior Chamber of Commerce and Alcoholics Anonymous. These groups are accorded a wide range of privileges, including meetings in spaces provided by the Department, newsletters published in prison facilities and distributed in bulk to inmates, outside organizers permitted to visit prisoners, and a variety of other activities, none of which are afforded the appellee Union. (A. 125-126, 174-175). Other groups of inmates allowed to hold meetings and have other privileges include Women's Club, Yokefellows, Boy Scouts, Weightwatchers, and China Art Club.

The District Court made the following findings:

> (1) The appellants fear the possibility of concerted group action but are not gravely concerned with mere association of inmates in the Union. (Jurisdictional Statement 22).
>
> (2) Inmates are permitted to join a Union and have been and are being permitted to join the North Carolina Prisoners' Labor Union, Inc. (Jurisdictional Statement 24).
>
> (3) There have been a number of recent incidents amounting to a denial of the Sixth Amendment right of a prisoner to legal representation. Most of the incidents have involved the utilization of paralegals and the suspicion of some prison administrators that the paralegals were engaged in soliciting membership rather than in the implementation of this lawsuit or other court proceedings. (Jurisdictional Statement 24-25).
>
> (4) There is not one scintilla of evidence to suggest that the Union has been utilized to disrupt the operation of the penal institutions. (Jurisdictional Statement 28).

(5) There is no evidence tending to show that the inmates intend to operate the Union to hamper and interfere with the proper interests of government. (Jurisdictional Statement 28).

(6) The record is bare of any suggestion of concerted activity, although the Union is said to have been active for many months and to number some 2,000 members. (Jurisdictional Statement 28).

SUMMARY OF THE ARGUMENT

I. The Regulation Prohibiting Inmates From Soliciting Other Inmates to Join the North Carolina Prisoners' Labor Union Violates First and Fourteenth Amendments Right of Association Principles.

A. The State Failed to Carry its Burden of Proving a Substantial Correctional Interest to Overcome the Prisoners' Constitutional Rights.

Appellants have not challenged the existence of North Carolina Prisoners' Labor Union, nor the rights of inmates to organize and join it. They have sought to prohibit prisoners from soliciting others to join the Union.

In order to justify this restriction of prisoners' First Amendment associational rights, the burden is upon the state to prove a sufficiently strong legitimate interest in security, order or rehabilitation unrelated to the suppression of expression. The state must show some basis in fact or experience for this justification.

The District Court made findings of fact fully supported by the evidence that the Union had not been utilized to disrupt

the operation of the penal institutions, and that there was no intention to operate the Union to hamper and interfere with proper interests of government. Thus, the state failed to demonstrate any basis for its hypothesis that the security interest or any other substantial penological concern would be threatened by the Union.

The prohibition or solicitation is a greater restriction on First Amendment rights than is necessary, and the state must adopt less restrictive measures aimed more precisely at the militancy or disruption that it wishes to avoid.

B. Adequate Alternatives to the Union by Which the Prisoners Can Advance Their Legitimate Goals Are Not Available

The question of adequacy of alternative means of pursuing the associational goals does not arise in this case, because the state has demonstrated no legitimate reason for restricting the inmates' rights.

Even if alternatives to the Union are to be considered, it must be concluded that none of them are adequate substitutes. Individual efforts at improving the lot of prisoners can never be as effective as group advocacy. The inmate grievance procedure is not a viable alternative, since its scope is much narrower than that of the Union, and appellants themselves have

attempted to abolish it. The legal resources of the Union are of great value to prisoners, who would otherwise be limited in their ability to have meaningful access to the courts. Convicted felons are deprived of the right to vote, and thus are unable to affect directly the decisions of government; the Union provides them a vehible for gaining an outside support group with political power.

II. The Banning of Union Membership Solicitation, meetings and Bulk Newsletter Distribution Violates Fourteenth Amendment Equal Protection Principles.

A. The Prisoners' Labor Union Members are Entitled to be Treated Equally with Members of Other Inmate Organizations.

Prisoners are entitled to equal protection of the laws with respect to fundamental rights, including the associational rights at issue here.

The Jaycees and Alcoholics Anonymous are granted the opportunities to solicit members, hold meetings, and distribute their newsletters in bulk. The aims and activities of these organizations are closely similar to those of the Union. There is

no evidence to support appellants' suspicions that the Union's activities will be detrimental to the state interests of security, order or rehabilitation. In the absence of such evidence the state has a constitutional duty to grant the Union the same opportunities for membership solicitation, meetings, and publication distribution that it does to the other organizations.

B. The Equal Treatment Mandated by the District Court was an Appropriate Prophylactic Measure to Prevent Rampant Violation of the Prisoners' Correspondence, Reading and Judicial Access Rights.

Appellants opened incoming mail to Union members and returned it without explanation, seized and either disposed of or returned Union newsletters without any procedures, and permanently banned paralegals working on Union legal matters, all as part of their campaign to suppress the Union.

Each of these acts was in patent violation of this Court's decision in Procunier v. Martinez, 416 U.S. 396 (1974). The District Court's order requiring that the Union be treated equally with other inmate organizations had the salutory effect of bringing these unconstitutional practices to a halt.

ARGUMENT

I. THE REGULATION PROHIBITING INMATES FROM SOLICITING OTHER INMATES TO JOIN THE NORTH CAROLINA PRISONERS' LABOR UNION VIOLATES FIRST AND FOURTEENTH AMENDMENTS RIGHT OF ASSOCIATION PRINCIPLES.

Although "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights," Price v. Johnston, 334 U.S. 266, 285 (1948), it is now settled that "a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822 (1974). The North Carolina Prisoners' Labor Union, as an organization dedicated to the goals of effecting prison reform and promoting understanding of the problems of offenders and ex-offenders, seeks to exercise rights guaranteed by the First and Fourteenth Amendments: the right to associate to vindicate shared political and social goals, see Healy v. James, 408 U.S. 169 (1972); United Transportation Union v. State Bar of Michigan, 401 U.S. 576 (1971); United Mine Workers v. Illinois St. Bar Ass'n, 389 U.S. 217 (1967); Brotherhood of R.R. Trainmen v. Virginia State Bar, 377 U.S. 1 (1964); NAACP v. Button, 371 U.S. 415 (1963); NAACP v. Alabama, 375 U.S. 449 (1958), and the right to petition all three branches of both state and federal governments for the redress of grievances,

see Pell, supra at 828 n. 6; Procunier v. Martinez, 416 U.S. 396, 419 (1974); Healy, supra at 181; Johnson v. Avery, 393 U.S. 483 (1969); Ex Parte Hull, 312 U.S. 546 (1961).

A. The state failed to carry its burden of proving a substantial correctional interest to overcome the prisoners' constitutional rights.

The question presented in this appeal concerns the constitutionality of specific regulations promulgated by the North Carolina Department of Correction, inter alia prohibiting inmates from soliciting other inmates to join the Union by any means, either oral or written.[1] Appellant

[1] The pertinent portion of the regulation in question provides: "Persons in the custody of the Department of Correction are prohibited from soliciting other inmates about membership in any inmate union. If the Officer in charge has reason to believe that correspondence between inmates concerns organization of an inmate union in violation of this rule, then the correspondence may be censored and if necessary delivery may be withheld. An inmate accused of soliciting shall be subject to discipline for agitating and failing to obey a lawful order. The unit superintendent or his designated representative shall proceed against the inmate accused in accordance with established Departmental procedures." (Jurisdictional Statement 38).

has not attempted, either by departmental regulation or by its position in the court below, to challenge the existence of the appellee Union or the right of inmates to join the Union. On finding that the Department of Correction permitted inmates to join the Union, the District Court properly declined to consider the question of whether inmates have a First and Fourteenth Amendment right to organize and join the Union. Jurisdictional Statement 22-23; 409 F.Supp. at 940-41.[2] Therefore, it is

[2] Courts which have considered this question have held that inmates do have a right to associate and to engage counsel to vindicate their legal rights, see Butler v. Preiser, 380 F.Supp. 612, 620 (S.D.N.Y.); National Prisoners' Reform Ass'n v. Sharkey, 347 F.Supp. 1234, 1237-38 (D.R.I. 1972); cf. Goodwin v. Oswald, 462 F.2d 1237, 1245-48 (2d Cir. 1972) (Oakes, J., concurring); Fortune Society v. McGinnis, 319 F.Supp. 901 (S.D.N.Y. 1970). The right of inmates to form and join such associations if the associations seek to accomplish their goals only by peaceful means was also recognized in Paka v. Manson, 387 F.Supp. 111, 123 n. 19 (D. Conn. 1974).

not necessary for this Court to decide whether inmates have a constitutional right to organize or to join a prisoners' union.[3]

In Pell v. Procunier, supra, this Court established a framework for analyzing the validity of state regulations which are asserted to inhibit prison inmates' exercise of rights within the ambit of the First and Fourteenth Amendments. First, it is evident here, as it was in Pell, that the challenged regulation does restrain inmates' freedom of communication. See id. at 823. Inmates who converse or correspond with each other may be punished under the regulation if they express their beliefs on a subject of common interest - the formation and activities of the Union. As the District Court stated, under Pell, supra, prisoners are permitted to "talk about any subject of interest to them that does not conflict with legitimate penological objectives of the institution," Jurisdictional Statement 27; 409 F.Supp. at 943; accord, Fortune Society v. McGinnis, supra at 905. Because the challenged regulation obviously curtails expression, the restriction must be analyzed "in terms of

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[3] Appellant's attempt to shift its position in this Court and its invitation to the Court to decide questions not raised below should be rejected. See page 31 infra.

the legitimate policies and goals of the correction system." Pell, supra at 822.

Although, as appellants note, prison officials are afforded a degree of latitude in resolving matters of internal prison administration, Martinez, supra at 414, this latitude is not total. The decisions of this Court in Pell, supra, and Martinez, supra, demonstrate some of the boundaries placed on the deference accorded prison administrators, limitations derived from traditional First Amendment analysis. First, the state may not "offend a fundamental constitutional guarantee." Martinez, supra at 405. Second, the interest the state asserts to justify a restriction of inmates' rights must be a legitimate interest in security, order or rehabilitation, unrelated to the suppression of expression. See Pell, supra at 826-28; Martinez, supra at 411, 413, 415. Finally, it is not sufficient for the state merely to invoke its legitimate interest in security. The state has some burden to demonstrate a reasonable connection between the interest cited and the activity or expression being prohibited. For example, in Martinez, supra, the state asserted that censorship of inmates' mail to excise inflammatory racial or political comments was justified "as a precaution against flash riots and in the furtherance of inmate rehabilitation." Id. at 416. Although not doubting that the state has a legitimate interest in preventing flash riots, this Court rejected the tendered justification because

the state had not demonstrated any persuasive connection between such expression and the asserted consequences. Id. Similarly, although rehabilitation is certainly a legitimate state goal, the Court found that the state had failed to show any logical connection between censorship and inmate rehabilitation. Id. Thus, while the state is not required to prove with certainty that the adverse consequences they allegedly fear will flow from the prohibited activity, Martinez, supra, at 414, the lesson of Martinez is that the state must be able to show some basis in fact or experience for their fears. Compare Healy, supra at 186. Even in the peculiarly restricted environments of schools and prisons, "undifferentiated fear is not enough to overcome the right to freedom of expression." Tinker v. Des Moines Community School Dist., 393 U.S. 503, 508 (1969).

Under Pell and Martinez, the court below therefore was required to weigh the evidence to determine first, whether the state had any legitimate interest in the challenged restriction and, second, whether the evidence showed a reasonable connection between the state's asserted interest and the prohibited activity. Appellants attempted to justify the challenged regulation by asserting that the Union might jeopardize the security of the North Carolina prisons, raising the

spectre of disappointed inmates becoming militant and disruptive if their demands were not met. On examining the proferred expert testimony and evidence about the North Carolina Prisoners' Union, the court found "not one scintilla of evidence to suggest that the Union has been utilized to disrupt the operation of the penal institutions," and no evidence "tending to show that the inmates intend to operate [the Union] to hamper and interfere with the proper interests of government." Jurisdictional Statement 28; 409 F.Supp. at 944. In addition to considering the history of the North Carolina Prisoners' Labor Union in the context of the North Carolina prisons, the court also reviewed testimony of prison administrators from other jurisdictions and declined to find on the basis of this testimony that a prisoners' union was likely to pose any danger whatever to prison security. Jurisdictional Statement 26-27; 409 F. Supp. at 943. Thus, although the interest in prison security cited by appellants is a legitimate interest, the court found that appellants had failed to demonstrate any basis in fact or experience for the hypothesis that this interest would be jeopardized if prisoners were allowed to discuss the Union and invite other inmates to join it.

In accordance with this determination that the state had, in effect, "exaggerated its responses," see Pell, supra, at 827, the court concluded that inmates' expressions of belief about the Union, or invitations to join the Union, would not threaten the security of the prison, and that there was no substantial governmental interest in suppressing such expression. Jurisdictional Statement 27; 409 F.Supp. at 943. On balance, therefore, the court concluded that the regulation banning solicitation was invalid.

Review of the record and of the opinion testimony reiterated in appellants' brief in this Court shows that the District Court's findings were fully supported by the evidence and, therefore, not clearly erroneous. Although the Union has 2200 members, there was not one incident cited tending to show that the Union or any individual member of the Union has been or is likely to be disruptive or militant,[4] or that any member is likely to

[4] Compare Paka v. Manson, 387 F.Supp. 111 (D. Conn. 1974), where the court found that Connecticut had presented substantial evidence to show that a prisoners' organization at one institution and the plaintiff inmates representing that organization had been attempting to exacerbate racial tensions at the institution, and to polarize inmates and administration. In light of

arrogate excessive power to himself. Compare Paka, supra.

It is not surprising that the District Court was unimpressed by the state's attempts at self-justification. The speculative fears expressed below and repeated in appellants' brief in this Court appear to be based in large part on a misapprehension or misrepresentation of the nature of the appellee Union.[5]

4 (cont.) documented incidents of disruption, the court found that the state's fear of this particular organization was not exaggerated, id. at 121, and that the propensity for violence shown by plaintiff distinguished their organization from non-disruptive inmate groups protected by the courts in Sharkey, supra, and Butler, supra. See 387 F.Supp. at 123 n. 19.

[5] It should also be noted that the speculative fears the state has expressed are intended to support its novel claim, raised for the first time in this Court, that the state has no obligation to "recognize" the Union or to allow the Union to exist. None of the allegations purporting to show that the Union is "bad," see Jurisdictional Statement 25-27; 409 F. Supp. at 942-43, present any justification whatever for the specific regulation

The state asserts that the Union "would create friction between inmates and staff," and that an organization with no bargaining power would be likely to resort to strikes and riots if officials refuse to deal with inmates. Appellants' Brief 9-10. According to the unrebutted testimony, the Union seeks to resolve disputes by peaceful means, and seeks to utilize channels outside the prison, such as community groups, the legislature and the courts, to accomplish goals, many of which have little or nothing to do with internal prison administration. See A. 169-175.[6]

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[5] (cont.) banning solicitation. As the District Court found, it is irrational to permit inmates to join a group and then to prohibit them from inviting other inmates to join that same group. Id. at 27-28; 409 F.Supp. at 943. The state cannot, at this late date, avoid the inconsistency of this position by questioning whether they were required to grant permission for inmates to join the Union.

[6] Compare Paka, supra, where the plaintiff organization's only stated goal was to negotiate inmate grievances with the prison administration.

The asserted fear that particular inmates will exert undue control over other inmates is unsupported by any evidence about particular inmates, or by any evidence substantiating the theory that such an organization would create power figures.[7] The conseqences the state envisions seem to be

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[7] The interest of correctional administrators in preventing prisoners from gaining disproportionate notoriety and influence among their fellow inmates was regarded as sufficient to overcome First Amendment interests involved in press interviews with designated prisoners in Saxbe v. Washington Post Co., 417 U.S. 843 (1974). Recently, however, the Bureau of Prisons has voluntarily withdrawn the regulation there upheld, not because of any constitutional deficiency, but simply because it isn't useful. Federal Prison System Policy Statement on Contacts with News Media, No. 1220.1C (Jan. 17, 1977). The lesson to be learned from this experience is that state interests which are asserted to be powerful enough to overcome First Amendment rights must not be uncritically accepted, but must be scrutinized with some degree of skepticism. Searching for some scrap of evidence that inmate organizations will breed power brokers, appellants refer to the suppression of young convict leadership by some of the oldtimers at the Rhode Island Adult Correctional Institution.

grounded, for the most part, in the state's erroneous assumption that the Union intends to operate as a collective bargaining unit, and to engage in concerted action to force their demands upon the prison administration. This is precisely what the Union does not intend to do. As the District Court found, under North Carolina law, collective bargaining between any union and a state agency is prohibited, N.C. Gen. Stat. §95-98. The District Court has already held that inmates "have no right to form or belong to a labor union for the purpose of taking concerted action to force their demands upon prison administrators," or to resist prison discipline. Jurisdictional Statement 30; 409 F.Supp. at 945.[8] Appellee Union has no disagreement with this

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[7] (Cont.) Appellants' Brief 16, n. 8. What appellants fail to mention is that Warden Mullen was unable to identify the Reform Association or its leadership in any way with these events, and that he regarded the association as being positive and useful. (A. 29, 38-39, 75, 77).

[8] The District Court also found irrelevant that the Union originally hoped to operate as a bargaining unit, and that the Charter of Incorporation lists bargaining as one of the Union's purposes. Jurisdictional Statement 21 n. 1; 409 F. Supp. at 940 n. 1.

principle, and thus presents no cause for the alarm expressed by the state. As the District Court found, there is absolutely no reason to anticipate that the Union has the intention to take concerted action attributed to them by appellants. Jurisdictional Statement at 28; 409 F.Supp. at 944.

If the Union were to bely its own goals by becoming militant or disruptive, the state would then have a basis for stopping further solicitation, and for curtailing Union activities to whatever extent necessary. Where as here, First Amendment rights are involved, the state must adopt the least restrictive alternative means of furthering its legitimate interests. Shelton v. Tucker, 364 U.S. 479, 488 (1960). This requirement applies in prison as well as outside, for as the Court said in Martinez, 416 U.S. at 413, "the limitation of First Amendment freedoms must be no greater than is necessary or essential to the particular government interest involved." Appellants' regulation banning solicitation of members by the Union, therefore, sweeps too broadly. The state is permitted under the First Amendment only to prohibit imagined activities of the Union, e.g. strikes, work stoppage, which would have some potential for injuring security, discipline, and other interests

legitimately claimed by appellants, unless it could be demonstrated that the mere solicitation of members bears a threat of such harm, and that of course the appellants have failed to do.[9]

Since the state has presented no demonstrable basis for its fear of the Union, and in fact has permitted inmates to join the Union, there is no legitimate justification for a total ban on solicitation of other inmates. It is apparent that the state's only interest in the content of inmates' conversations or correspondence about the Union is a bald desire to suppress expression which it finds unwelcome, but cannot demonstrate to be dangerous, an interest which is clearly impermissible. See Martinez, supra

[9] The District Court's holding, allowing prison officials to further their asserted goal of preventing militant coercive action by prohibiting only militant activity and not all Union activities, is consistent with these principles. Equally consistent is the court's observation that if inmates ever threaten concerted action to force compliance with their demands or to disrupt discipline, not only union solicitation may be stopped, but also the Union can be put down to whatever extent necessary. Jurisdictional Statement 28-29.

at 413. Because the state's only interest in enforcing the regulation on solicitation is not unrelated to the suppression of expression, it is respectfully submitted that the District Court did not err in finding that inmates must be allowed some means of inviting other inmates to join the Union.[10]

B. Adequate alternatives to the Union by which the prisoners can advance their legitimate goals are not available.

Appellants also suggest that the District Court should have held that inmates in the North Carolina prisons have no right to associate to petition for redress of grievances because they have

[10] In so finding, the District Court recognized the state's right to regulate the "time, place and manner" of communications among inmates, see Pell, supra at 826; Jurisdictional Statement 30; 409 F.Supp. at 945. The appellee Union does not assert a right to solicit by any particular means; they only claim the right to some form of communication about membership in the Union, at least in contexts where inmates are already permitted to speak or correspond with one another, and the right not to be punished for discussing the Union's lawful activities.

a means of communicating their grievances to the prison administration through the inmate grievance procedure. Appellant's Brief 23-25. This argument is based on the fact that this Court, in Pell, supra at 823-26, found that so long as reasonable and effective means of communication between inmates and the press were available, the state could legitimately ban face-to-face interviews between individual inmates and represenatives of the press. However, the Court made this finding in light of its recognition that allowing unrestricted access to prisons by the press would entail obvious problems of security and administration. Id. at 825. The question of whether or not alternative methods of communication exist only becomes relevant where the state has demonstrated that it does have a legitimate and well-founded reason for imposing a restriction on the form of communication inmates choose. Where a demonstrated legitimate state interest must be weighed against an inmate's desire for unrestricted freedom of communication, the question of whether effective alternative means of communication exist is a factor that should enter into the balance. Thus, in Pell, the Court found that the state's legitimate and demonstrable interests outweighed the inmate's interest in the desired form of communication in the light of available and effective alternatives.

In Johnson v. Avery, supra, the inmate's need for assistance to gain access to the courts was found to outweigh a legitimate state interest because no effective alternative means of access were available. When the state has no legitimate interest in suppressing the inmates' chosen method of expression or communication, however, the existence of alternative means of communication is irrelevant. To allow the state to choose the means by which inmates may pursue lawful and constitutionally protected activities when the inmates' choice of methods does not conflict with any legitimate state interest is to allow the most arbitrary and intrusive censorship.

Further, there are no adequate alternative methods by which appellee and its members can hope to accomplish their goals.

Individual efforts at litigating, stimulating legislative action, and otherwise acting to ameliorate prison conditions are no substitute for the effectiveness of such activities when undertaken by a group. As this Court stated in N.A.A.C.P. v. Alabama, 357 U.S. 449, 460 (1958), "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhenced by group associations, as the Court has more than once recognized by

remarking upon the close nexus between the freedom of speech and assembly." There can be no adequate alternative means to the effectiveness of advocacy by group associations.

Appellants point to the inmate grievance procedure as a constitutionally acceptable alternative to the Union. The inmate grievance procedure has been threatened by budgetary cut backs, and appellants themselves have attempted to abolish the inmate grievance procedure altogether. (A. 181-184). This procedure clearly does not provide an adequate alternative forum, for many of the problems that the appellee Union seeks to address do not concern the internal administration of prisons to which the grievance procedure is limited.[11] For example, the Union seeks to deal with problems ex-offenders confront in re-entering society by promoting public awareness of these problems, by seeking to establish halfway houses and ex-offender employment services, and by other feasible means. (A. 171-172). The prison administration has no power to

[11] The Executive Director of the inmate grievance commission testified that he did not consider the Union to pose any threat to the jurisdiction of his agency. (A. 180).

effect these reforms.

One of the Union's primary purposes is to sponsor and secure attorneys for prisoner rights and prison conditions litigation. (Articles Incorporation 2-3; A. 170-171). Cooperative arrangements for vindicating legal rights through court action is a manifestation of the right of association that has been accorded a high level of protection in this Court. N.A.A.C.P. v. Button, 371 U.S. 415 (1963); Brotherhood of Railway Trainmen v. Virginia, 377 U.S. 1 (1964); United Mine Workers v. Illinois State Bar Association, 389 U.S. 217 (1967); United Transportation Union v. State Bar of Michigan, 401 U.S. 576 (1971). The right of access to the courts is one right that a prisoner clearly retains; this right is absolutely essential because all other constitutional interests of a prisoner depend upon his ability to get his case to court. Ex parte Hull, 312 U.S. 546 (1941); Johnson v. Avery, 393 U.S. 483 (1969). In the latter case this Court expressly approved the collective solution to gaining practical access to the courts devised by the jailhouse lawyer and his inmate client. The promise of better access to the courts, through Union lawyers, their paraprofessionals and law libraries and other advantages, is something for which appellants have not provided, and are unwilling to provide, any acceptable

alternative. See Ross v. Moffitt, 417 U.S. 600 (1974) (no appointed counsel beyond direct appeal to intermediate appellate court in North Carolina); Smith v. Bounds, pending decision of this court as no. 75-915 (state's position is that no law books whatsoever should be made available to prisoners in North Carolina).

In Pell, supra, at 828 n. 6, this Court suggested that the right to petition the government for redress of grievances encompasses the right to petition all three branches of the government. Collectively petitioning the public, the courts, the legislature and the executive branch is one of the very few potentially effective means available to inmates who wish to bring about peaceable change in the correctional system.[12] Individual inmates cannot reasonably expect to

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12 As the Second Circuit noted in Sostre v. McGinnis, 442 F.2d 178, 200 (2nd Cir. 1971), cert. denied sub nom. Oswald v. Sostre, 405 U.S. 978 (1972), "[t]he generous scope of discretion accorded prison authorities also heightens the importance of permitting free and uninhibited access by prisoners to both administrative and judicial forums for the purpose of seeking redress of grievances against state officers."

influence the legislature by writing letters proposing new programs. Since convicted felons are deprived of the right to vote in North Carolina, Fincher v. Scott, 352 F.Supp. 117 (M.D.N.C. 1972), see Ramirez v. Richardson, 418 U.S. 24 (1974), inmates cannot even hope to influence the legislative or executive branch by use of the ballot. Prisoners must, of necessity, be concerned with problems of prison reform and society's treatment of ex-offenders. It is no less imperative that the rest of society understand and attempt to address the problems of offenders and ex-offenders. See Burger, Our Options Are Limited, 18 Vill. L. Rev. 165 (1972). As noted above, this Court has consistently held that inmates retain all First Amendment rights not inconsistent with their status or with legitimate penological goals. Pell, supra, at 822; Price v. Johnston, supra, at 285. The choice of means of expressing beliefs, seeking redress of grievances, and discussing and pursuing common goals, as freedoms springing from the very core of the First Amendment, must be among those rights retained.

II. THE BANNING OF UNION MEMBERSHIP SOLICITATION, MEETINGS AND BULK NEWSLETTER DISTRIBUTION VIOLATES FOURTEENTH AMENDMENT EQUAL PROTECTION PRINCIPLES.

A. The Prisoners' Labor Union Members are Entitled to be Treated Equally with Members of Other Inmate Organizations.

Because the freedom of association derived from the First Amendment is involved here, the members of the North Carolina Prisoners' Labor Union are entitled to be placed on an equal footing with members of other inmate organizations. "The right to equal protection of the laws, in the exercise of those freedoms of speech and religion protected by the First and Fourteenth Amendments, has a firmer foundation than whims or personal opinions of a local governing body." Niemotko v. Maryland, 340 U.S. 268, 272 (1971).

This Court has condemned discriminatory treatment of prisoners, at least where fundamental rights (or suspect classifications) are in issue, in a variety of contexts. Cruz v. Beto, 405 U.S. 319 (1972); Cooper v. Pate, 378 U.S. 546 (1964; O'Brien v. Skinner, 414 U.S. 524 (1974); Lee v. Washington, 390 U.S. 333 (1968). Certainly then lawful incarceration does not cause a forfeiture of the prisoner's entitlement to equal protection of the laws with respect to fundamental rights under the Fourteenth Amendment. Cf., Price v. Johnston, 334 U.S. 266, 285 (1948).

The Junior Chamber of Commerce and Alcoholics Anonymous are allowed to operate within the prisons by the North Carolina Department of Correction.[13] These organizations are permitted to solicit other prisoners to join, to meet in space provided by the Department, to publish newsletters in prison facilities and distribute them in bulk to inmates, to have outside organizers and leaders who visit them, and to be involved in a variety of other activities. None of these opportunities were afforded the North Carolina Prisoners' Labor Union. (A. 125-126, 174-175).

Appellants give their reason for the discriminatory treatment to be that the Junior Chamber of Commerce and Alcoholics Anonymous have been found to demonstrate legitimate rehabilitative purposes and to fill the needs of the inmates, that the Jaycees are able to attain productive associations with stable community representatives and to accomplish some of its projects in the community, and that Alcoholics Anonymous provides therapeutic support for those who have encountered the deteriorative effects of alcoholism. (A. 126-127). Yet the appellee Union has goals that are equally positive: procuring

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[13] Other groups recognized and allowed to operate by the Department of Correction include Women's Club, Yokefellows, Boy Scouts, Weightwatchers and China Art Club.

meaningful rehabilitation programs, defending human and civil rights of prisoners, arranging for community based support groups to further the cause of prisoner reform, to establish halfway houses, to assist prisoners finding homes and jobs upon release, and advancement of prisoners' economic, political, social and cultural interests. (Articles of Incorporation 2-3; A. 170-171). Moreover, the evidence is uncontradicted that the Union had helped to bring about a measure of racial unity at Central Prison, that democratic processes of the organization had had a positive effect on the members' individual responsibility, and that the Union had helped to build self-reliance among the inmates by working toward positive means of overcoming the common problems of the confined. (A. 172-173, 166-167).

Unsupported by the evidence, appellants harbor suspicions that the activities of the Union will be detrimental to the institutional rehabilitation programs and will pose a threat to the security and discipline of the correctional system. Appellants seek to outlaw the Union on the basis of their own unfounded fears, and not on the basis of the declared purposes of the Union or any actions that to date have been attributed to it. The discriminatory treatment of the Union, when measured against the privileges granted to other inmate organizations

with similar goals and activities, is the denial of equal protection of the laws in its baldest form. The Court in Greer v. Spock, 424 U.S. 828, 838 (1976), decided that the admission of a visiting preacher, an outside lecturer on drug abuse, and a rock music group did not make it mandatory that a military base commander allow political speakers to use his facilities, but the Court made it clear that the base commander was not free to admit some political candidates and exclude others based on their "supposed political views" without violating equal protection principles.

Even if the appellants were right, and there could be discerned from the record some substantial qualitative difference between the goals of the prisoners' union and the goals of the organizations which appellants allow to be active, the Union on the one hand and the other inmate groups on the other hand have so many characteristics in common, that they cannot be subjected to disparate treatment without a denial of equal protection of the laws. The Union and the other groups alike are composed primarily of inmates, have outside supporters, desire to improve the conditions of their members, seek for support and recognition by members of the general public, and plan various service projects. The correctional administration is bound by the Fourteenth Amendment not to treat these similar organizations differently, simply

because the Union and its members say things or stand for things that are unwelcome to their keepers. Procunier v. Martinez, 416 U.S. 396, 413 (1974).

The fundamental constitutional right of association is claimed by appellee and its members. The opportunities -- solicitation of membership, holding of meetings, convenient distribution of its publications -- made available by appellants voluntarily to similarly situated groups, and granted to appellee by order of the district court, all are reasonable and necessary toward the advancement of associational interests. To justify the deprivation of these opportunities to appellee, the burden falls upon the State to show that they are overcome by a very substantial state interest in prison security, discipline, or rehabilitation. Cruz v. Beto, supra; Cooper v. Pate, supra; Procunier v. Martinez, supra. As is fully demonstrated in Part I. A. of this argument, the state has utterly failed to carry this burden.[14]

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[14] In conformity with the District Court's opinion, the Department of Correction adopted a regulation on May 5, 1976, which provides for non-discriminatory treatment of all inmate groups, and properly takes into account the legitimate state interests involved. Appellee knows of no impairment to security, discipline and rehabilitative programs within the Department

The District Court correctly applied these principles. Although it was found that no danger to security and order could presently be expected from Union

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of Correction, that in any way can be attributed to the enforcement of this new regulation. Given appellants' penchant for going outside the record of this case, Appellants' Brief, 29, n. 16, it must be assumed that any negative results attributable to the new regulations would have been brought to the Court's attention. The regulation provides:

> .0201 GENERAL
> The purpose of this section is to regulate the activities of inmate groups not sponsored by the Department of Correction and organized within units of the division of prisons. Organizations will be allowed to perform rehabilitative functions but organized inmate discussions may be limited where security considerations may be undermined. Programs directly sponsored by the division of prisons and regularly scheduled religious services are not regulated by this section.
>
> .0202 TIME, PLACE
> (a) Organizations may meet no more than two times per week actively. The exact number of daily meetings may be limited where adequate facilities are unavailale.

meetings and bulk mailings, the Court made it clear that the prison authorities retained the prerogative to restrict or stop the activities if they threatened

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(b) Each meeting shall be directly supervised by line staff members whenever possible. The officer in charge shall decide whether sufficient staff is present to allow any particular meeting. If not, the meeting may be postponed until adequate supervision becomes available.
(c) The number of inmates permitted to attend meetings of inmate organizations will be limited as follows:
(1) Maximum and close custody institutions - no more than 25 inmates.
(2) Medium and minimum custody units - no more than 25 inmates.
All inmates are permitted to attend outside sponsored group activities except those assigned to administrative, disciplinary, or indefinite non-punitive segregation; death row or safekeeping, new admissions.
(d) Meeting length subject to reasonable limits.

.0203 PROGRAM SPONSORS
All program sponsors are subject to departmental rules and regulations regarding searches of visitors and the time, place and manner of visitation. (2F.0100 and 2D .0200).
The number of sponsors may be limited as specifically provided in 2D.0204(b). Program sponsors may be

unrest, disruption, breaches of security, or were otherwise harmful. Jurisdictional Statement, 29-30. Thus, the court below gave the appellants all the latitude

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excluded from prison facilities for any of the reasons stated in 2D.0201 (c).

.0204 STATEMENT OF PURPOSE, BYLAWS
All outside sponsored groups must have an approved statement of purpose and bylaws on file with the Chief of Program Services. This statement must contain the following:
(1) Purpose and objective of organization;
(2) Methods required to achieve purpose (operation statement);
(3) Requirements for membership;
(4) Dues (if any) and recordkeeping procedures. This should include disbursements and statements of quarterly balances; (fiscal procedures shall be approved by the Comptroller).
(5) Statement of affiliations of national or regional organizations if applicable.
(6) Method of electing officers.

in governing their institutions which they reasonably need, and at the same time upheld the rights of the Union and its members to equal protection of the laws.

B. The Equal Treatment Mandated by the District Court was an Appropriate Prophylactic Measure to Prevent Rampant Violation of the Prisoners' Correspondence, Reading, and Judicial Access Rights.

In addition to seeking protection for associational rights, the Union asked for injunctive relief in this case against unconstitutional withholding of correspondence, interdiction of publications, and interference with paralegals.

Robbie Purner, a non-prisoner and supporter of the Union, attempted to correspond with several inmates. Her letters were intercepted by correctional personnel and mailed back to her without explanation. (A. 144-146). By Department of Correction regulations, inmates are entitled to receive incoming mail, as long as it does not contain contraband, material that poses a clear and present danger to security or material that cannot lawfully be mailed. (A. 135-136). The regulations presently before the Court ban solicitation of members only by fellow inmates, not by non-prisoners. Thus, appellants violated their own regulations by interfering with the mail from Ms. Purner to her inmate correspondents. This

conduct was also in violation of the clear command of Procunier v. Martinez, 416 U.S. 396, 417 (1974), requiring "that an inmate be notified of the rejection of a letter written by or addressed to him, that the author of that letter be given a reasonable opportunity to protest that decision, and that complaints be referred to a prison official other than the person who originally disapproved the correspondence."

The Union publishes a bi-monthly newsletter. (A. 171). Correctional officers intercepted the Union newsletters, and either returned them to the senders or disposed of them without following any procedures. (A. 143, 151-153, 154). A Department of Correction regulation authorizes inmates to receive publications through the mail from publishers, allows inmates to exchange newspapers and other publications, permits publications to be rejected only if they pose a clear and present danger to prison security or are obscene, and establishes procedures for rejections including notice, opportunity to be heard, and impartial decision making. (A. 138-140). The decisions are legion, both before and after Prounier v. Martinez, which hold that publications cannot be withheld from prisoners without complying with the procedural due process requirements of (1) notice, (2) some opportunity to object, either personally or in writing, and (3) a decision by someone who can be expected to act fairly. Sostre v. Otis,

330 F.Supp. 941 (S.D.N.Y. 1971); Hopkins v. Rollins, ___ F.2d ___ (4th Cir. No. 76-1564, Jan. 28, 1977); Aikens v. Lash, 390 F.Supp. 663, 672 (N.D. Ind. 1975); Battle v. Anderson, 376 F.Supp. 402, 425 (E.D.Okla. 1974); Gray v. Creamer, 376 F.Supp. 675, 682-683 (W.D.Pa. 1974); McCleary v. Kelly, 376 F.Supp. 1186, 1192 (M.D.Pa. 1974); Laaman v. Hancock, 351 F.Supp. 1265, 1268 (D.N.H. 1972). The summary interdiction of the Union's newsletters was in clear violation of appellants' own standing regulation and was a denial of procedural due process of law.

Deborah Mailman, one of the appellee's attorneys, employed two paralegals, Chuck Eppinette and Robbie Purner, to visit prisoners in connection with legal representation of the Union, as well as in connection with work being done by her as a private attorney for prisoners and as a cooperating attorney of the North Carolina Civil Liberties Union. (A. 157-163, 164). Appellants barred Ms. Mailman's paralegals from the prisons, based on suspicions that they were acting as Union organizers instead of legal assistants. (A. 123-124, 130-133). In Procunier v. Martinez, supra, the Court invalidated a regulation which banned paralegals who were not either lawyers themselves or licensed private investigators, from interviewing prisoners. Accordingly, appellants' conduct in this regard was in clear violation of the established right of access of prisoners to the courts.

Instead of dealing with these numerous collateral violations of prisoners' rights specifically and in great detail, [15] the Court invoked the acceptable expedient of simply requiring the appellants to treat the Union the same as other organizations. Once the Union can no longer be singled out and treated in a discriminatory fashion, all of the other constitutional problems tend to disappear. Members of the Jaycees and Alcoholics Anonymous were not being heard to complain that their mail was being withheld, that their newsletters were being sent back, or that their lawyers' paralegals were being denied access to them. Once the Union is regarded as legitimate and the discrimination against its members ceases, the deprivation of rights relating to correspondence, publications, and access to the courts likewise are resolved. In this way the District Court's order had a prophylactic effect, and should be upheld in part because of the collateral constitutional deprivations that it cures.

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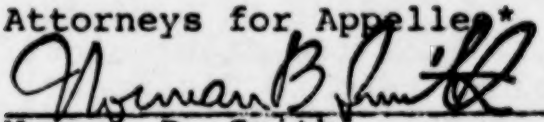
[15] The District Court did briefly discuss the exclusion of paralegals, concluding that a paralegal with a genuine need to interview a prisoner with respect to pending litigation could not be excluded, even if during the course of the interview there is a solicitation to join or other conversation concerning the Union. Jurisdictional statement 30-32.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the decision of the District Court should be affirmed.

Respectfully submitted,

Attorneys for Appellee*



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No. 75-1874

In the Supreme Court of the United States

OCTOBER TERM, 1976

DAVID L. JONES, SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL., APPELLANTS

v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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INDEX

	Page
Questions presented	1
Interest of the United States	2
Statement	3
Summary of Argument	6
Argument	10
I. The First Amendment does not require prison officials to permit inmates to solicit membership in and operate a prison union	10
A. The demands of prison security justify substantial restrictions on the First Amendment right of association of inmates	16
B. Rehabilitative considerations also counsel strongly against the recognition of inmate unions	22
C. Regardless of the strength of penological considerations, prisoners have no First Amendment rights to form and operate a union where, as here, there are effective alternative means of expressing inmate grievances	27
II. The decision of prison authorities to grant privileges only to those inmate organizations whose operations will further legitimate correctional goals does not violate equal protection of law	33
Conclusion	38

CITATIONS

Cases:

	Page
Arciniega v. *Freeman*, 404 U.S. 4	14
Birzon v. *King*, 469 F. 2d 1241	14
Bonner v. *Coughlin*, 517 F. 2d 1311	13
Bryan v. *Werner*, 516 F. 2d 233	14
Edwards v. *Sard*, 250 F. Supp. 977	17
Evans v. *Moseley*, 455 F. 2d 1084, certiorari denied, 409 U.S. 889	14
Grayned v. *City of Rockford*, 408 U.S. 104	28
Greer v. *Spock*, 424 U.S. 828	28, 37
Hyser v. *Reed*, 318 F. 2d 255, certiorari denied *sub nom. Thompson* v. *United States Board of Parole*, 375 U.S. 957	14
Johnson v. *Avery*, 393 U.S. 483	29
Kelly v. *Brewer*, 525 F. 2d 394	14
Kleindienst v. *Mandel*, 408 U.S. 753	29
Lanza v. *New York*, 370 U.S. 139	13
Malone v. *United States*, 502 F. 2d 554, certiorari denied, 419 U.S. 1124	14
Marshall v. *United States*, 414 U.S. 417	36
McGinnis v. *Royster*, 410 U.S. 263	10, 36
Meachum v. *Fano*, No. 75–252, decided June 25, 1976	13
Montanye v. *Haymes*, No. 74–520, decided June 25, 1976	13
Morrissey v. *Brewer*, 408 U.S. 471	14
Paka v. *Manson*, 387 F. Supp. 111	26, 32
Pell v. *Procunier*, 417 U.S. 817	*passim*
Preiser v. *Rodriguez*, 411 U.S. 475	15
Price v. *Johnston*, 334 U.S. 266	7, 12
Procunier v. *Martinez*, 416 U.S. 396	12, 13, 15, 29, 35
Richardson v. *Ramirez*, 418 U.S. 24	16
Sellers v. *Ciccone*, 530 F. 2d 199	14

Cases—Continued

	Page
Sostre v. *McGinnis*, 442 F. 2d 178, certiorari denied, 404 U.S. 1049	26
Sweet v. *South Carolina Department of Corrections*, 529 F. 2d 854	14
United States v. *Dawson*, 516 F. 2d 796, certiorari denied, 423 U.S. 855	13
United States v. *Kohlberg*, 472 F. 2d 1189	14
Williams v. *New York*, 337 U.S. 241	22
Wolff v. *McDonnell*, 418 U.S. 539	12, 13, 17, 26
Constitution and statute:	
United States Constitution:	
First Amendment	*passim*
Fourteenth Amendment	1, 4, 6, 34, 38
42 U.S.C. 1983	4
Miscellaneous:	
Abrahamsen, *The Psychology of Crime* (1st ed. 1960)	25
Administrative Office of the United States Courts, *1975 Annual Report of the Director*	31
Administrative Office of the United States Courts, *1976 Semi-Annual Report of the Director*	32
American Correction Association, *Manual of Correctional Standards*	23
Bandora, *Principles of Behavior Modification* (1967)	24
Barabedian, *The Natural History of an Inmate Community in a Maximum-Security Prison*, 61 Journal of Criminal Law, Criminology and Police Science 78 (1970)	18

Miscellaneous—Continued

Page

Bureau of Prisons Policy Statement Nos.:
2001.6A, "Administrative Remedy of Complaints Initiated by Offenders in Bureau of Prisons Facilities" (October 18, 1974)---------- 30
7300.115A, "Inmate Organizations" (December 9, 1974)---------- 2, 38
Eysenck, *Crime and Personality* (1964)---- 17, 23
Halleck, *Psychiatry and the Dilemmas of Crime* (1st ed. 1967)---------- 17, 25
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Richmond, *Prisoner Management and Control* (1969)---------- 23
Schrag, *Leadership Among Prison Inmates*, in *Readings in Criminology and Penology* (Dressler ed. 1964)---------- 18, 25

Miscellaneous—Continued

Page

Skinner, *Science and Human Behavior* (1953) ---------- 24
Wallach, Kogan and Bem, *Group Influence on Individual Risk Taking*, 65 Journal of Abnormal and Social Psychology 75 (August 1962)---------- 17–18

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1874

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v.

NORTH CAROLINA PRISONERS' LABOR UNION, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

QUESTIONS PRESENTED

The United States will discuss the following questions:

1. Whether prison regulations that prohibit inmates from organizing or soliciting membership by other inmates in a "prisoners' union" violate the First and Fourteenth Amendments.

2. Whether principles of equal protection require prison officials to grant privileges to a "prisoners' union" to the same extent that other organizations are allowed to operate within the prison.

INTEREST OF THE UNITED STATES

This case presents important questions concerning the constitutionality of the efforts of correctional authorities to prevent the formation within the prison system of a so-called "prisoners' union." Although the case involves only the measures adopted by one state to halt the spread of that type of inmate organization, the Court's decision is likely to have a direct impact on the existing practices and procedures within the federal prison system.[1] Attempts have already been made to "unionize" the inmate population at certain federal correctional facilities, and these incidents have prompted the Bureau of Prisons to enforce a strict prohibition against all forms of inmate union activity. The federal ban is quite similar to the regulatory scheme at issue here.[2] The United

[1] The federal prison population presently stands at more than 28,000 inmates, incarcerated at 50 institutions of various types across the country. The Bureau of Prisons operates six penitentiaries, 22 federal correctional institutions, four prison camps, three metropolitan correctional centers, two detention centers, 12 community treatment centers, and one medical center.

[2] The federal government's restrictions on unionism are not expressly articulated in any Bureau of Prisons Policy Statement. Union activity has been prohibited under that portion of Policy Statement No. 7300.115A, "Inmate Organizations" (December 9, 1974), governing inmate organizations generally, which states: "Any inmate organization which would work in opposition to the orderly function and operation of the institution will not be approved." Pursuant to this policy, the Bureau, like the State of North Carolina, has made solicitation activities by inmates on behalf of any union organization a breach of prison disciplinary rules, prohibits inmate union meetings, denies any union group the privilege of mailing its literature in bulk into federal prisons, and denies visiting privileges to those who seek to enter a federal institution solely for the purpose of encouraging or aiding the formation of an inmate union.

States thus has a direct and immediate interest in the resolution of the constitutional issues presented.

STATEMENT

1. The State of North Carolina has chosen to prevent those incarcerated within its prisons from forming or operating a "union." Regulations of the State Department of Correction adopted pursuant to this policy determination provide that no prison official shall "authorize the use of Departmental facilities for such organization, negotiate with, bargain with, or otherwise enter into discussion with such an organization or representative of such organization, nor permit such organization to hold meetings or assembly on Departmental property" (J.S. App. 37). These regulations also state (*id.* at 38):

> Persons in the custody of the Department of Correction are prohibited from soliciting other inmates about membership in any inmate union. If the officer in charge has reason to believe that correspondence between inmates concerns organization of an inmate union in violation of this rule, then the correspondence may be censored and if necessary delivery may be withheld. Any inmate accused of soliciting shall be subject to discipline for agitating and failing to obey a lawful order. The unit superintendent or his designated representative shall proceed against the inmate accused in accordance with established Departmental procedures.

Acting pursuant to these regulations, State correctional officials prohibited prisoners from soliciting

other inmates to join appellee North Carolina Prisoners' Labor Union, Inc. ("the Union") and refused to deliver packets of Union publications that had been mailed in bulk to selected inmates for redistribution to other prisoners. Furthermore, the authorities forbade Union meetings on departmental property and cancelled the visiting privileges of paralegal assistants to an attorney for the Union after it was discovered that they had entered the prison solely to discuss organizational strategy with Union members (J.S. App. 24–25).

2. Appellee, a North Carolina corporation whose stated goal is "the promotion of charitable labor union purposes" and the formation of a "prisoners' labor union at every prison and jail in North Carolina to seek through collective bargaining * * * to improve * * * working * * * conditions" (J.S. App. 21, n. 1), instituted this action on March 18, 1975, in the United States District Court for the Eastern District of North Carolina to challenge the anti-union regulations of the State Department of Correction. The complaint, based on 42 U.S.C. 1983, alleged that the State's efforts to prevent operation of a prisoners' union within its correctional institutions violated the rights of Union members to association and assembly under the First and Fourteenth Amendments to the United States Constitution and that the refusal to grant the Union privileges accorded other inmate organizations within the prison system deprived it

of equal protection of the laws (A. 7–8). The Union further alleged that prison officials had unconstitutionally interfered with correspondence between inmate Union members and representatives of the Union outside the prison and had terminated the visiting privileges of the Union attorney's paralegal assistants, in violation of the inmates' rights to counsel and access to the courts (A. 8). Substantial damages and a declaratory judgment and injunction against the continuation of these practices were sought (A. 9–10).

3. A three-judge district court, convened pursuant to 28 U.S.C. 2281 and 2284, granted appellee limited injunctive relief (409 F. Supp. 937; J.S. App. 20–32). At the outset, the court expressly declined to determine "whether prisoners * * * have a constitutional right to join a corporate association of inmates," since "the parties agree that [State correctional officials] permit inmates to join the Union" (J.S. App. 22, 23). In view of what the court took to be a state policy countenancing union membership, the court perceived the question presented to be whether the State had any continuing legitimate interest in regulating expression among inmates on the subject of prison unions or in prohibiting solicitation or organizational activities on behalf of such groups. The court concluded that the State lacked any such interest, holding that "[t]o permit an inmate to join a union and forbid his inviting others to join borders on the irrational" (*id.* at 27–28). It therefore enjoined State correctional authorities from preventing inmate Union members from soliciting

other prisoners to join the Union "orally or by written or printed communication" (*id.* at 32) and from "refus[ing] receipt of the Union's publications on the ground that they are calculated to encourage membership in the organization or solicit joining" (*id.* at 28–29).

Furthermore, the court held that the Equal Protection Clause of the Fourteenth Amendment prohibited the State from picking and choosing among inmate organizations "depending upon its approval or disapproval of the message or purpose of the group" (J.S. App. 29). Hence, absent a showing that the Union was "detrimental to proper penological objectives" or would constitute a "present danger to security and order" (*id.* at 29, 30)—a showing the court believed the State was incapable of making in view of its failure to forbid union membership by inmates of its prisons (*id.* at 29)—correctional officials were required to permit outsiders to visit those inmates with whom they "are engaged * * * in legitimate Union projects to the same extent that other members of free society are admitted for like purposes" and were obliged to accord the Union mass mailing and meeting privileges to the same extent that other inmate organizations enjoyed such privileges within the prison (*id.* at 33–34).[3]

SUMMARY OF ARGUMENT

1. Inherent in the very nature of imprisonment is the substantial deprivation of a person's liberty.

[3] The Union's request for damages and attorney's fees was denied (J.S. App. 21–22).

"Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Price* v. *Johnston,* 334 U.S. 266, 285. In the First Amendment context, the test for determining whether a prison regulation works an impermissible abridgment of associational freedoms was articulated in *Pell* v. *Procunier,* 417 U.S. 817, 822:

> [A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. Thus, challenges to prison restrictions that are asserted to inhibit First Amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law.

Application of these principles indicates that the district court erred in invalidating the State's regulation prohibiting the solicitation or formation of an inmate union within its penal institutions. State prison officials had a rational basis for concluding that the operation of an inmate union within the confines of a prison would have a significant adverse effect on the rehabilitative goals of the institution and would pose a serious potential menace to its security. In the absence of a showing that the officials exaggerated their response to these legitimate concerns, the district court should have deferred to their expert judgment in such matters.

Prisons are closed societies of proven lawbreakers under the constant supervision and control of a limited staff. Widespread hostility and frustration make the atmosphere frequently tense and volatile. The presence of any concerted inmate activity within a prison therefore is a cause for concern, but an inmate union, with its exclusive focus on the expression and attempted resolution of prisoner grievances and its potential for collective action, would present an especially dangerous threat to the physical safety of the prison community. Persons tend to behave with greater emotion and fewer inhibitions when acting as part of a group. Moreover, experience indicates that the leadership of an inmate union would most likely be composed of prisoners who are serving long sentences, generally for crimes of violence, and who thus have demonstrated the greatest tendency in the past toward the use of force as a problem-solving technique.

Inmate unionism also would inhibit attempts to inculcate a new value system in prisoners, to prepare them for a law-abiding life in the outside world. Bargaining between inmate groups and prison officials over conditions of confinement and rules of discipline within the institution may lead to an erosion of the concept of societal control and authority in the minds of the inmates. A formal union structure interposed between the prisoners and correctional staff also would destroy the direct supervisory relationship essential to the reorientation of inmate values and would delegate substantial power within the prison to persons

having no responsibility for, and perhaps little interest in, its successful operation.

The unique features of the prison system suggest that the decision to permit inmate unions to function should be imposed not by courts but by correctional authorities, in whose sound discretion the individual needs of each class of inmates and of the institutions in which they are incarcerated may be weighed. Particularly in view of the availability of a number of other effective means by which prisoners may communicate their complaints about prison conditions and may obtain relief from abuses, including a formal grievance procedure, a ban on the operation of inmate unions does not violate the First Amendment.

2. The district court also erred in concluding that principles of equal protection require correctional officials to grant identical operating privileges to all inmate organizations that do not pose a clear and present danger to the security of the institution. The decision to permit any organized group to function within the prison walls demands a delicate assessment of the character of the inmate population and the nature and composition of the particular group. A ruling that prison officials may not act to control concerted action by prisoners without some articulable threat to prison security would seriously intrude upon their discretion to fashion or prohibit programs depending upon an expert appraisal of their penological value. Similarly, a ruling that every inmate organization not posing a direct threat to prison secur-

ity must be accorded privileges within the prison system equal to those given any other organization would prevent experimentation with varied forms of inmate group activity, to the detriment of correctional goals.

All that the Equal Protection Clause demands is that the distinctions drawn by the state in an "effort to encourage for its prisoners constructive future citizenship" have "some rational basis to sustain them." *McGinnis* v. *Royster,* 410 U.S. 263, 269–270. The determination by the State's correctional authorities to prohibit inmate union activity because of the serious rehabilitative and security problems it would cause, while permitting other organizations presenting none of those problems to operate prison chapters, meets that criterion.

ARGUMENT

I. THE FIRST AMENDMENT DOES NOT REQUIRE PRISON OFFICIALS TO PERMIT INMATES TO SOLICIT MEMBERSHIP IN AND OPERATE A PRISON UNION

The district court's characterization of its decision as involving only "narrow issues" of "peripheral" importance (J.S. App. 23, 27) should not be permitted to obscure or minimize the significance of this case. The district court began with the premise that the case does not present the question "whether prisoners * * * have a constitutional right to join a corporate association of inmates" (*id.* at 22), because the State technically permits those incarcerated in its institutions to become members of a prison union. But the court misunderstood the State's policy with regard to inmate

unionization and exaggerated the extent to which that policy is in fact permissive.

As we understand the State's policy, inmates are not precluded from joining a union because membership *per se* incurs no dues or other obligations. A prisoner may join the Union, for example, merely by calling himself a "member." Under these circumstances, a prohibition against "membership" would be impossible to enforce. Nominal affiliation with a "union," however widespread within the inmate population, assumes significance only when such membership is the precursor of some form of concerted organizational activity. It is against this possibility of group activity—the solicitation of membership in and actual operation of a prisoners' union—that the State's regulatory scheme is aimed.

By invalidating the State's regulations, the court below effectively has deprived prison authorities of the power to promulgate and enforce measures reasonably calculated to prevent inmates who are interested in forming a union—or any other organization not posing a clear and present danger—from coalescing into a group and operating as such within the prison system. The district court's analysis conflicts with this Court's recent observation that "challenges to prison restrictions that are asserted to inhibit First Amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections systems, to whose custody and care the prisoner has been committed in accordance with due process of law." *Pell* v. *Procunier,* 417 U.S. 817, 822.

229-214—77——3

While paying lip service to these principles (J.S. App. 29), the court has adopted an unworkable and dangerous standard—*i.e.*, that prisoners have a First Amendment right to communicate with fellow inmates about any subject of mutual interest, which right may be abridged only when demonstrably essential "to restore and protect security and order" (*id.* at 28). This standard fails to assess an inmate's associational interests in terms of his "status as a prisoner" (*Pell* v. *Procunier, supra,* 417 U.S. at 822) and gives insufficient weight to the expert judgment of correctional officials concerning the optimum manner in which to accomplish valid penological objectives or to preserve a peaceful and productive relationship within the prison system.

Any analysis of the issues raised by appellee's attempt to unionize the State's inmates must begin with the paramount consideration that this case "arises in the context of prisons" (*Procunier* v. *Martinez,* 416 U.S. 396, 412) and that "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Price* v. *Johnston,* 334 U.S. 266, 285. See also *Wolff* v. *McDonnell,* 418 U.S. 539, 555; *Pell* v. *Procunier, supra,* 417 U.S. at 822. In seeking a "mutual accommodation between institutional needs and objectives [of prisons] and the provisions of the Constitution that are of general application" (*Wolff* v. *McDonnell, supra,* 418 U.S. at 556), the Court has repeatedly recognized the need for major restrictions on prisoners' rights.

An inmate, for example, is not entitled to a number of procedural protections at a prison disciplinary hearing that would be accorded at a parole or probation revocation proceeding, solely because of factors unique to the institutional setting (*Wolff* v. *McDonnell, supra,* 418 U.S. at 561–562), nor does he enjoy the same right of privacy or protection against searches and seizures as do free citizens. *Lanza* v. *New York,* 370 U.S. 139, 143. See also *Bonner* v. *Coughlin,* 517 F. 2d 1311, 1315–1317 (C.A. 7); *United States* v. *Dawson,* 516 F. 2d 796, 805 (C.A. 9), certiorari denied, 423 U.S. 855.

Similarly, in the context of First Amendment guarantees, the courts have concluded that an inmate's associational liberties necessarily must be abridged substantially by virtue of incarceration. Thus, in *Pell* v. *Procunier, supra,* a blanket prohibition on access by prisoners to the news media was upheld, although the Court conceded that the regulation "restricts one manner of communication between prison inmates and members of the general public beyond the prison walls" (417 U.S. at 823); in *Procunier* v. *Martinez, supra,* 416 U.S. at 413, prison mail censorship meeting specified criteria was sustained; and in *Meachum* v. *Fano,* No. 75–252, decided June 25, 1976, the broad discretion of correctional officials to transfer an inmate between prison facilities was upheld despite the inevitable disruption of whatever associations the inmate may have cultivated in a particular prison. See also *Montanye* v. *Haymes,* No. 74–520, decided June 25, 1976. Pris-

oners have no protectible interest in assignment to a particular work detail (*Bryan* v. *Werner*, 516 F. 2d 233, 240 (C.A. 3)) or training program (*Sellers* v. *Ciccone*, 530 F. 2d 199, 201–204 (C.A. 8)) and may even be segregated from the rest of the prison population so long as the decision is not discriminatory and the conditions of confinement are otherwise humane. See *Sweet* v. *South Carolina Department of Corrections*, 529 F. 2d 854, 861 (C.A. 4) (*en banc*); *Kelly* v. *Brewer*, 525 F. 2d 394, 399–400 (C.A. 8); *Evans* v. *Moseley*, 455 F. 2d 1084, 1086 (C.A. 10), certiorari denied, 409 U.S. 889.[4]

The rationale underlying these restrictions is that imprisonment inherently is a major deprivation of the prisoner's liberty, although the degree of that deprivation may vary depending on the nature of the institution in which the prisoner is incarcerated, the term of imprisonment, other conditions contained in the sentencing authority's determination, and a variety

[4] Even when released on parole, a former prisoner enjoys only a "conditional liberty" (*Morrissey* v. *Brewer*, 408 U.S. 471, 480), and the government may impose restrictions on his freedom of association to "insur[e] that its rehabilitative goal is not frustrated and that the public is protected from further criminal acts by the parolee." *Birzon* v. *King*, 469 F. 2d 1241, 1243 (C.A. 2). See, *e.g.*, *Malone* v. *United States*, 502 F. 2d 554 (C.A. 9) (probationer convicted of smuggling guns to the Irish Republican movement lawfully may be restricted from associating with Irish cultural groups), certiorari denied, 419 U.S. 1124; *United States* v. *Kohlberg*, 472 F. 2d 1189 (C.A. 9) (approving restriction on probationer's association with known homosexuals); *Hyser* v. *Reed*, 318 F. 2d 225, 239 (C.A.D.C.) (*en banc*) (approving restriction on probationer's right to frequent pool halls), certiorari denied *sub nom. Thompson* v. *United States Board of Parole*, 375 U.S. 957. Cf. *Arciniega* v. *Freeman*, 404 U.S. 4.

of other factors. Unlike the outside world, the prison environment is typically a closed society in which a number of inmates reside involuntarily in close, round-the-clock proximity, often for substantial periods of time, under the supervision and control of a limited number of prison staff members. For prisoners, as this Court has noted, "eating, sleeping, dressing, washing, working, and playing are all done under the watchful eye of the [government] * * *." *Preiser* v. *Rodriguez*, 411 U.S. 475, 492.

Moreover, the important functions of the correctional system would be hindered if substantial limitations on the freedom of inmates could not be imposed, since the success of crime deterrence and rehabilitation is dependent in large part upon the regimentation and discipline of those who have been incarcerated. Finally, "central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves. It is in the light of these legitimate penal objectives that a court must assess challenges to prison regulations based on asserted constitutional rights of prisoners." *Pell* v. *Procunier, supra*, 417 U.S. at 823. See also *Procunier* v. *Martinez, supra*, 416 U.S. at 412.

Prison regulations barring the solicitation of membership in and operation of inmate unions are the product of an expert assessment of these considerations. In developing such rules, the State Department of Correction, like the Federal Bureau of Prisons, has attempted to take into account the overriding need for prison security and the important rehabili-

tative purposes served by disciplined incarceration. Although the Union and the district court (J.S. App. 28) assume that these penological notions are outmoded, and arguments may be made for permitting prison unions to function, it is not for the courts "to choose one set of values over the other." *Richardson* v. *Ramirez*, 418 U.S. 24, 55. "Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters." *Pell* v. *Procunier*, *supra*, 417 U.S. at 827.

A. THE DEMANDS OF PRISON SECURITY JUSTIFY SUBSTANTIAL RESTRICTIONS ON THE FIRST AMENDMENT RIGHT OF ASSOCIATION OF INMATES

Prisons differ radically from free society. They are populated by people who have not chosen to be there, but who have been incarcerated by authority of the state because they have been found to have violated one or more of the laws established by society for its orderly governance. Moreover, a large proportion of inmates are not in prisons for the first time. Although the range of offenses for which they have been committed is broad, including many major crimes of violence, all inmates share the characteristic of having on one or more occasions resorted to seriously illegal means in order to achieve their goals or to resolve problems confronting them. Against this background, the constant exposure of prisoners to the

close supervision and control of the prison staff may frequently breed hostility and tension between the two—to a greater extent and with a sharper focus than in almost any setting in the outside world. Prison life and inmate-staff relationships thus include an ever-present potential for explosive confrontations. See *Wolff* v. *McDonnell, supra,* 418 U.S. at 561–562. Cf. *Edwards* v. *Sard,* 250 F. Supp. 977, 981 (D.D.C.).

Confrontations can usually be handled with a minimum of disruption in the outside world, where the individuals affected may return to their respective homes, avoid further contact, and vent their emotions in less explosive surroundings. But diffusion of antagonisms occurs less readily in the typical prison setting, where the parties always remain in close proximity to each other. Because of these explosive conditions, any form of concerted activity inside the prison walls is a potential danger to security, but inmate unionism—with its exclusive focus on inmate grievances and their resolution—is especially prone to contribute to the high level of tensions. Many inmates are impulsive and action-oriented. See Halleck, *Psychiatry and the Dilemmas of Crime* 284 (1st ed. 1967); Eysenck, *Crime and Personality* 144 (1964). These traits are likely to be magnified when expressed through a union, for individuals tend to behave more emotionally and are more prepared to take risks when they act as part of a group rather than alone. See Wallach, Kogan, and Bem, *Group Influence on Individual Risk Taking,* 65 Journal of

Abnormal and Social Psychology 75 (August 1962).

To be sure, responsible prison leaders might be capable of restraining the excesses of their followers. But studies suggest that the leadership of an inmate organization such as a union is most likely to consist of hardened criminals who are serving long sentences, generally for serious crimes of violence. Schrag, *Leadership Among Prison Inmates,* in *Readings in Criminology and Penology* 536, 542 (Dressler ed. 1964). See also Barabedian, *The Natural History of an Inmate Community in a Maximum-Security Prison,* 61 Journal of Criminal Law, Criminology and Police Science 78, 80 (1970); McCorkle and Korn, *Resocialization Within Walls*, 293 Annals of the American Academy of Political and Social Science 88, 89 (May 1954). Thus, those inmates who have demonstrated the greatest tendency to use force as a problem-solving technique would be likely to play the major role in determining the union's course of action in any confrontation with prison officials.[5]

Moreover, the problems posed by an inmate union are compounded by its potential impact in a jurisdic-

[5] The extreme anti-social attitudes previously exhibited by those most likely to occupy a position of power in the union also inevitably will result in breaches of prison discipline, unrelated to union activity, by union leaders. In such circumstances prison officials would be placed in the dilemma either of punishing the inmate—and thereby taking the risk of a major disorder if the leader asserts, or his followers believe, that the punishment actually was for union activity—or of ignoring the infraction. Experience in prisons that have permitted unions to function suggests that some wardens have chosen the latter course, with the consequent impairment of their control over the institution. See Remick, *In Constant Fear* (1975).

tion, such as North Carolina, with a number of correctional facilities.[6] If allowed to function, the union would possess the capability of engineering system-wide disruptions that could severely strain a prison system's ability to mount a successful effort to restore order at any one institution. While such outbreaks are always a possibility even in the absence of inmate unionism, a formal organizational structure linking all of those incarcerated in a state's various institutions, which inevitably would lead to establishment of regular lines of communication between union "locals" and a shared allegiance and community of interest, would greatly increase the chances of wide-scale unrest. Indeed, chapters of the union at other prisons might be encouraged to engage in "sympathy" disruptions in the knowledge that the state's ability to respond effectively to the initial disobedience would be compromised if it were forced to divert a portion of its limited enforcement resources elsewhere.[7]

[6] The State maintains a prison system composed of 77 different units for adult convicts (A. 60). The federal government maintains 50 separate institutions. See note 1, *supra.*

[7] James W. Mullen, Warden of the Adult Correctional Institutions in Rhode Island, who has had prior experience with prison unions, addressed this possibility in his deposition (A. 73): "I think in looking at the picture of that situation, you know, at any given moment, through any type of communication, you could have your hands full. If the word was given that a prison in Raleigh that * * * at 12:00 tomorrow, boys, we don't move. We just sit there. The State of North Carolina is in big trouble. You know, you'd have to get the Army to straighten it out for that violence in such an area, so spread out, you know, in that span, you know. It scares me." See also Deposition of Paul W. Keve, Delaware Director of Adult Corrections (A. 90, 102).

Finally, prison unionism frequently may result in breaches of security because unrest is the sole weapon inmates perceive as effective to protest their real or imagined grievances. Unlike unions in free society, which may exert economic pressure on employers by strikes or other means, the only concerted action available to inmates to enforce their demands would be a coordinated disobedience, violent or otherwise, of prison rules. As the district court acknowledged (J.S. App. 21, n. 1), correctional authorities have no obligation to recognize or to bargain collectively with an inmate union, yet a refusal to bargain with the chosen representatives of the prisoners undoubtedly would be misinterpreted as indifference to inmate problems and might easily fan flames of violence or mutiny within the close confines of a prison.

The district court gave little or no weight to these critical considerations unique to the prison setting. While the court acknowledged that, "[i]f the day should ever come that inmates threaten concerted action to force compliance with their demands and to disrupt prison discipline," State prison officials lawfully could take the steps necessary to restore order (J.S. App. 28), it nonetheless gave dispositive weight to the fact that "[t]his is not a case of riot" and that no evidence had been presented to show that the Union had thus far "been utilized to disrupt the operation of the penal institutions" (*ibid.*).

We submit that the court's unsubstantiated assumption concerning the efficacy of future remedies to prevent union-instigated disorder is insufficient to

overcome the expert judgment of the State's correctional officials that prisoners' unions would pose a serious potential threat to prison security—a judgment that is shared by the overwhelming number of states as well as the Bureau of Prisons and that is "peculiarly within the province and professional expertise of corrections officials" (*Pell* v. *Procunier, supra,* 417 U.S. at 827). As a practical matter, the decision to permit formation of an inmate union within a prison may be irreversible, and the consequences from an imprudent decision to allow unionism could be drastic. In view of the unquestionably rational basis for the determination that inmate organizations may contribute to unrest and may transform minor outbursts into major conflagrations, the Constitution does not compel prison officials to assume that risk merely because they are unable to present direct evidence of "present danger to security and order" (J.S. App. 30).

Indeed, the Union's failure thus far to create unmanageable difficulties suggests only that the State has been successful in its efforts to prevent those inmates who consider themselves to be "members" of the Union from functioning as a group capable of threatening institutional security. Nor is the Union's avowed dedication to peaceful reform at this time a valid barometer for forecasting its future actions. If it becomes a fixture in the prison system, the Union will be controlled by the inmates themselves, not by responsible outside advocates of non-violent prison reform.

Any realistic evaluation of the risk the Union poses therefore must be based not upon the representations of its organizers but rather upon an assessment of the character of the persons who ultimately will govern it and the special features of the institutional environment in which it will operate. A consideration of these critical factors indicates that the State's regulations prohibiting union solicitation or operation within its prison walls is a legitimate response to realistic evils it has a compelling interest to avoid.

B. REHABILITATIVE CONSIDERATIONS ALSO COUNSEL STRONGLY AGAINST THE RECOGNITION OF INMATE UNIONS

Imprisonment is now perceived as having as a major purpose the rehabilitation of the inmate through affirmative programs such as counselling and training. "[S]ince most offenders will eventually return to society, another paramount objective of the corrections system is the rehabilitation of those committed to its custody." *Pell* v. *Procunier, supra,* 417 U.S. at 823. Cf. *Williams* v. *New York,* 337 U.S. 241, 248–249, n. 13.

In line with this theory, institutional discipline is viewed by prison officials as no longer serving only the narrow purpose of maintaining order within the prison. It also is intended to serve the larger goals of the institution as a whole—*i.e.,* to assist each prisoner in developing self-reliance, self-control, self-respect, and self-discipline. The aim is not merely that the prisoner learn to conform to institutional rules and regulations, but also that he be imbued with the desire to

conform to accepted standards of individual and community life in the outside world. See Eysenck, *supra,* at 144–161.

Thus, it is now widely agreed by correctional authorities that

> [d]iscipline * * * looks beyond the limits of the inmate's term of confinement. It must seek to insure carry-over value by inculcating standards which the inmate will maintain after release. It must always be objective and must develop in the inmate personal responsibility to that social community to which he will return.

American Correction Association, *Manual of Correctional Standards* ch. 24.7. Accordingly, the stated goals of inmate discipline are now largely synonymous with those of the correctional process itself, *i.e.,* modification of the criminal value system. Richmond, *Prisoner Management and Control* 14 (1969).[8]

To maximize the rehabilitative effect of discipline, prison officials necessarily must have the ability to exercise unfettered control over an inmate's daily activities. Inmate unionization, at least to the extent that it is effective, undermines that ability. Formal bargaining between prison officials and the union over conditions of confinement and the rules of discipline would create the impression of equality in the prison

[8] It has been said that "[t]he administrative manipulation of rewards, favors, privileges, and punishments with a view to promoting changes in value identification" is "a central administrative objective" in obtaining a shift in the inmate's value orientation. Ohlin, *Modification of the Criminal Value System,* in *The Sociology of Punishment and Correction* 179 (Johnson ed. 1962).

power structure between the inmate population and those in positions of responsibility and thereby could lead to an erosion of the concept of societal control and authority in the minds of the inmates. Rehabilitational efforts to impress upon prisoners that rules imposed by others must be obeyed, whether or not they are beneficial to one's personal interests, would be obstructed.

Moreover, the union can be expected to function as an intermediary through which prison management must deal before it may enforce disciplinary rules against individual prisoners. Not only would this destroy the direct supervisory relationship between inmate and staff that is essential to the reorientation of values through discipline, but also it would in many cases prevent quick and simple punishment for infractions.[9]

Many inmates enter prison with feelings of hostility and frustration, perceiving themselves to have been no more culpable than others not convicted, to have been merely unlucky. In a large number of cases they refuse to acknowledge that their difficulties stem from their own distorted behavioral patterns. This refusal to accept guilt for wrongdoing and the concomitant tendency to project blame on others are thought by many experts to constitute the dynamic of an inmate

[9] Many behavioral scientists have emphasized that discipline generally should closely follow the violation if it is to be effective in behavior modification. See generally Bandora, *Principles of Behavior Modification* (1967); Krasner & Ullman, *Research in Behavior Modification* (1965); Skinner, *Science and Human Behavior* (1953).

social system, which typically is preoccupied with protesting injustices of prison life through repetitive challenges to prison authority. McCorkle and Korn, *supra*, at 88–89. See also Halleck, *supra*, at 306; Abrahamsen, *The Psychology of Crime* 110 (1st ed. 1960).

The prison social system is usually rigidly hierarchical in structure, with older, more hardened inmates normally occupying the positions of highest status. McCorkle and Korn, *supra*, at 89–90; Schrag, *supra*. The system sustains itself to the extent that it can successfully extort concessions from prison authorities. Daily prison life has been described as a series of "bargains' between correctional officers and inmate leaders, in which the officers agree to relax enforcement of disciplinary rules in exchange for the leaders' promise to maintain a modicum of order among their inmate followers. The leaders' ability to perform their part of the bargain depends in turn upon the selective application of their influence with the correctional officers on behalf of those followers willing to cooperate. See Note, *Bargaining in Correctional Institutions: Restructuring the Relation between the Inmate and the Prison Authority,* 81 Yale L.J. 726 (1972).

The norms of this inmate social system are inimical to the rehabilitative goals of imprisonment. The first such goal is to teach the inmate to accept responsibility for his own actions. To the extent that the inmate's natural tendency to avoid guilt and to blame others for his plight is reinforced by his participation in the inmate community, successful rehabilita-

tion is frustrated. Yet, if permitted to exist and given official sanction, inmate unionization would strengthen this pre-existing social system and thus complicate further the already difficult task of rehabilitation. The union would replace an informal and imperfectly organized set of relationships, in which not all inmates participate, with a formally constituted body of pervasive influence whose sole focus would be the defense of prisoners "rights" against the alleged depredations of insensitive prison authorities. The result would be the institutionalization of the already harmful norms of the existing inmate community. In addition, since the union is likely to be controlled by those inmates previously holding informal leadership roles, official recognition of the union would solidify and legitimate the power of those leaders to manipulate their followers (see A. 36), thus making it even more difficult to achieve inroads in the prison social structure and burdening even further the rehabilitative effort.[10]

[10] The unfortunate experience of one prison, the Massachusetts Correctional Institute at Walpole, with an inmate union has been described by an eyewitness. See Remick, *supra*. As a result of dishonest elections, the union in Walpole was "made up of the toughest, most prisonwise inmates, [and] became a tool of the hard-core violent convicts, whose only interest in prison reform [was] in manipulating the operation of the prison for their own personal benefit. By prisoners' rights they really meant the right to do everything they wanted, and at the top of the list of what they wanted was to run the prison." *Id.* at 62–63. See also *Wolff* v. *McDonnell*, *supra*, 418 U.S. at 561–562; *Sostre* v. *McGinnis*, 442 F. 2d 178, 202 and n. 47 (C.A. 2) (*en banc*), certiorari denied, 404 U.S. 1049; *Paka* v. *Manson*, 387 F. Supp. 111, 119–120 (D. Conn.).

C. REGARDLESS OF THE STRENGTH OF PENOLOGICAL CONSIDERATIONS, PRISONERS HAVE NO FIRST AMENDMENT RIGHTS TO FORM AND OPERATE A UNION WHERE, AS HERE, THERE ARE EFFECTIVE ALTERNITIVE MEANS OF EXPRESSING INMATE GRIEVANCES

The regulations challenged by appellee, like those of the Bureau of Prisons, were not designed to hamper the ability of inmates to comunicate their grievances about prison conditions to correctional officials, the courts, or the public at large, nor do they have that effect. To the contrary, the ban against the solicitation or organization of inmate unions merely affects one of several ways in which prisoners may voice their complaints and may seek relief from the authorities. Since the constitutionality of prison restrictions that are alleged to inhibit First Amendment interests must inevitably depend upon a balancing of the inmates' need to exercise their rights against the legitimacy of the governmental inhibition, the availability of these other, effective channels through which those who have been incarcerated may object to prison conditions and may obtain the correction of abuses is of overriding importance.

***Pell* v. *Procunier*, *supra*,** supports this conclusion. There the Court considered the constitutionality of a California regulation against face-to-face interviews between representatives of the news media and state prisoners. In assessing the inmates' claim that a blanket prohibition against such interviews violated their First Amendment right of free speech, the Court observed (417 U.S. at 826) that it frequently had held

"that reasonable 'time, place and manner' regulations [of communicative activity] may be necessary to further significant governmental interests, and are permitted" (*Grayned* v. *City of Rockford*, 408 U.S. 104, 115) and that the prison regulation therefore "cannot be considered in isolation but must be viewed in the light of the alternative means of communication permitted under the regulations with persons outside the prison." 417 U.S. at 823. Since California's prisoners could communicate with persons on the outside through the mails and were afforded the opportunity to receive limited visits from family, clergy, legal counsel, friends, and prior acquaintances, the Court concluded that the state's "restriction on one manner in which prisoners can communicate with persons outside of prison" did not "abridge any First Amendment freedoms retained by prison inmates." *Id.* at 828.[11]

[11] In a related context, the Court recently upheld restrictions on political campaigning at the Fort Dix Military Reservation against a First Amendment challenge. *Greer* v. *Spock*, 424 U.S. 828. Although the Army regulation directly prohibited one means by which servicemen could learn about the issues of an election campaign and also limited the opportunity of political candidates to solicit the votes of those living on the base, the regulation served the important interest of avoiding military involvement in partisan politics. The Court struck the balance in favor of the public's interest in preserving the political neutrality of the armed forces. In his concurring opinion, Mr. Justice Powell focused on the availability of alternative channels for the flow of campaign information to Fort Dix personnel (*id.* at 847): "Political communications reach military personnel on bases in every form except when delivered in person by the candidate or his supporters and agents. The prohibition does not apply to television, radio, newspapers, magazines, and direct mail. Nor could there be any prohibition on handing out leaflets and holding campaign rallies outside the limits of the base. Soldiers may attend off-base rallies as long as they do so out of uniform. The candidates, therefore, have alternative means of communicating with those who live and work on the Fort; and servicemen are not isolated from the information they need to exercise their responsibilities as citizens and voters."

See also *Kleindienst* v. *Mandel*, 408 U.S. 753, 765.

Like the regulations at issue in *Pell*, the prohibitions against inmate unions enforced by the State and the Bureau of Prisons have at most an incidental and remote impact on whatever residuum of First Amendment rights of association and communication prisoners retain. Prisoners remain free to write letters to public officials, legal counsel, the news media, and other interested individuals and outside groups, in which they may criticize the policies of the correctional authorities and complain about the conditions of their confinement. See *Procunier* v. *Martinez, supra,* 416 U.S. at 413. They also may utilize visits to the prison by family, friends, attorneys and other persons for that purpose. Furthermore, prisoners have unrestricted access to the court to challenge the legality of the conditions of their confinement. *Johnson* v. *Avery,* 393 U.S. 483.

Finally, and perhaps of prime significance, prisoners already have at their disposal an inmate grievance procedure through which they may inform correctional officials of their complaints about prison conditions and may secure complete remedial action.[12] In the fed-

[12] The State's grievance mechanism (see Brief for Appellants at 22, n. 11) is described in detail in the affidavit of Ralph D. Edwards, Director of Prisons in the North Carolina Department of Correction (A. 127). See also Affidavit of David L. Jones, Secre-

eral system the Bureau of Prisons has established an Administrative Remedy Procedure under which an inmate is encouraged to attempt to resolve his grievance first through discussions with prison staff. See Policy Statement No. 2001.6A, "Administrative Remedy of Complaints Initiated by Offenders in Bureau of Prisons Facilities" (October 18, 1974). If informal negotiation does not achieve a satisfactory result, he may file a formal complaint with the warden or his designee on forms provided by the prison. The institution must then respond to the charges within 15 days from receipt of the complaint.[13] If the prisoner is not satisfied with the response, he may file an appeal within 30 days with the Bureau Director for the region in which his institution is located, who must reply in writing within 20 days from receipt of the appeal. An adverse decision by the Regional Director may be appealed further to the Bureau of Prisons in Washington, D.C., which must notify the inmate of the disposition of his case within 20 days.[14]

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tary of the North Carolina Department of Correction (A. 120–121). Most other prison systems have similar procedures for the resolution of inmate grievances. See McArthur, *Inmate Grievance Mechanisms: A Survey of 209 American Prisons*, 38 Federal Probation 41 (December 1974).

[13] When the complaint is of an emergency nature and relates to a threat to the inmate's immediate health or welfare, reply must be made as soon as possible and in any event within 48 hours from receipt of the complaint. Policy Statement No. 2001.6A, *supra*, ¶6.

[14] In cases of a sensitive nature, an inmate who reasonably believes that he would be adversely affected if his complaint were known at his institution may file it directly with the Regional Director. Policy Statement No. 2001.6A, *supra*, ¶6.

This procedure has proven to be an effective method of dispute resolution in the federal prisons. In 1975, the last year for which complete statistics are available, 6,076 formal complaints were lodged at the various facilities maintained by the Bureau of Prisons, of which 1,085 (or 18 percent) were resolved in favor of the inmate.[15] Furthermore, about 10 percent of the more than 1,400 appeals taken to the regional director level were granted, as were 13 percent of the approximately 700 appeals to the Bureau in Washington from decisions of the Regional Directors. Thus, federal prisoners received relief in approximately one-fourth

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[15] 4,530 complaints (75 percent) were denied and 461 complaints (7 percent) were dismissed as inappropriate subjects for administrative resolution (*e.g.*, tort claims, sentence reductions, denials of parole). These statistics were compiled by the Bureau of Prisons from monthly submissions by each federal correctional facility.

Although comprehensive statistics on the operation of the Procedure have not yet been compiled for 1976, it is estimated that more than 10,000 complaints were filed at the institutional level, an increase of more than two-thirds the number filed in 1975. The increased utilization of the Procedure may suggest that it is viewed by prisoners as a fair and effective means for the resolution of their grievances. This suggestion also is borne out by the steady increase in the number of monthly filings (from less than 300 in April 1974 to 650 in December 1975) and monthly regional appeals (from less than 80 in November 1974 to more than 160 in December 1975).

The Administrative Office of the United States Courts has attributed the recent decline in the rate of growth of federal prisoner petitions filed in the district courts to the operation of the Procedure. The number of federal prisoner petitions (*i.e.*, habeas corpus petitions, civil rights actions, mandamus petitions, motions to vacate sentence, and petitions to review parole decisions) rose only 1.2 percent in 1975, in contrast to the 10 percent increase experienced the year before. *1975 Annual Report of the Director*, Administrative Office of the United States Courts XI48–XI51. The slow-

of all grievances filed in 1975 under the Administrative Remedy Procedure.

The availability of this existing avenue for the notification of prison officials of inmate grievances and for the settlement of disputes substantially diminishes the purported need for a union. A union grievance procedure would offer no more efficient or effective means of securing relief on a complaint than that afforded by the present system, save for the impermissible express or implied threat to resort to collective action if satisfaction cannot be achieved through negotiation.[16] Indeed, lost in the process of a union-controlled grievance system would be the considerable rehabilitative benefits that are derived from a prisoner's independent attempts at complaint adjustment, attempts that do not depend for their success upon the favor of the inmate leadership.

Even if group expression of inmate grievances through the medium of a union might be marginally more effective in obtaining relief in certain cases, that possibility does not invest prisoners with a constitutionally protected interest in unionization. The fact of incarceration necessarily reduces, in some cases radically, an inmate's associational freedom. A prisoner retains only "those First Amendment rights that are not inconsistent with his status as a prisoner or

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ing of the rate of growth for petitions filed by federal inmates appears to have continued in 1976. See *1976 Semi-Annual Report of the Director*, Administrative Office of the United States Courts 15.

[16] "With no economic power, union militancy would be its only realistic basis for strength." *Paka* v. *Manson*, *supra*, 387 F. Supp. at 123, n. 18.

with the legitimate penological objectives of the corrections system," and the unique status of prisoners may supply reasons for limiting such rights that would be "unimpressive if * * * submitted as justification for governmental restriction of personal communication among members of the general public." *Pell v. Procunier, supra,* 417 U.S. at 822, 825.

The methods chosen by the State, and by the Bureau of Prisons, effectively to prevent inmate unionism are not broader than are necessary to protect the governmental interests involved. In view of the strong institutional and rehabilitative considerations militating against the operation of prison unions and the alternative measures open to inmates, regulations banning the solicitation of membership in or operation of such organizations within the prison walls do not abridge First Amendment rights.

II. THE DECISION OF PRISON AUTHORITIES TO GRANT PRIVILEGES ONLY TO THOSE INMATE ORGANIZATIONS WHOSE OPERATIONS WILL FURTHER LEGITIMATE CORRECTIONAL GOALS DOES NOT VIOLATE EQUAL PROTECTION OF LAW

Our submission thus far has been that prison inmates have no constitutional right to associate together in a union for the purpose of expressing inmate grievances. The penological objections to prison unions are substantial and the prohibition of such organizations works a minimal restriction on the ability of inmates to communicate their complaints about prison conditions. In short, inmate unions pose a true threat

to institutional security and may endanger the rehabilitative aims of imprisonment as well.

The validity of a decision by prison authorities to ban inmate unions is not undermined because other inmate groups, which in the opinion of the responsible officials do not raise similar correctional problems, are permitted to operate in the prison system. Modern penology charges prison officials with the responsibility of rehabilitating the offenders committed to their custody. As we have already noted, the effective exercise of this responsibility necessarily requires efforts to channel an inmate's associational activities in socially and psychologically beneficial directions. So long as their decision is based upon a professional assessment of the rehabilitative and security needs of the prison system, correctional officials must be accorded considerable latitude in choosing the organizations they deem appropriate to achieve this important task.

The district court disagreed with this proposition. It held that the Equal Protection Clause of the Fourteenth Amendment severely restricts the scope of prison officials' discretion to regulate inmate group activity in furtherance of valid penological goals. Since the State permits the Junior Chamber of Commerce and Alcoholics Anonymous to hold meetings of their respective memberships inside its prisons and to mail their organizational literature in bulk into the institutions (thereby deriving the benefits both of ease and of cheaper postal rates), the court held that the Union must be granted

identical privileges.[17] Indeed, in the court's view, except when prison officials have reason to believe that a particular organization threatens a "present danger to security and order" (J.S. App. 30), the Equal Protection Clause demands that *any* inmate group be given precisely the same privileges accorded other organizations that are permitted to operate within the prison—"neither more nor less" (*ibid.*).

This ruling effectively strips prison officials of all but the most limited power to control inmate group activity. It compels officials either to ignore the treatment needs of a large segment of the inmate population by refusing to permit organizations of obvious rehabilitative value (such as Alcoholics Anonymous)

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[17] Although the district court did not address the validity of the restrictions against mass mailings and group meetings under the First Amendment, it apparently did not question the authority of prison officials to ~~prohibit~~ deny privileges if the restriction were uniformly applied to all organizations. If, as we have argued, the State's ban on solicitation and other organizational activities on behalf of the Union does not violate the First Amendment, it would appear to follow that a prohibition on inmate meetings or mass mailings for that purpose also is permissible. See *Procunier* v. *Martinez*, *supra*, 416 U.S. at 408, n. 11.

To the extent that the Union's mailings are used by outsiders to communicate their views to willing inmates, restrictions on newsletter distribution within the prison system may present different problems, because such restrictions would implicate the First Amendment rights of persons who have not been incarcerated. See *Procunier* v. *Martinez*, *supra*, 416 U.S. at 408–409. This case does not squarely present those questions, however, since the State has disavowed any intention to interfere with correspondence between outsiders and individual inmates in which union matters are discussed. That policy apparently extends to individual mailings of the Union's newsletter to inmate subscribers (A. 129, 138–139).

to operate within the prison or to allow all inmate groups the same privilege, regardless of their rehabilitational utility or potential for harm, so long as they cannot be said to constitute an immediate and present threat to prison order.

The district court's decision seriously misperceives the requirements of equal protection as they apply to the discretionary, decision-making authority of correctional officials. Nothing in the Constitution requires prison officials to treat different inmate groups alike except when necessary to deal with an imminent threat of prison violence. Rather, since the distinctions drawn by the State arise "in the course of the State's sensitive and difficult effort to encourage for its prisoners constructive future citizenship," any differences in treatment "require only some rational basis to sustain them." *McGinnis* v. *Royster*, 410 U.S. 263, 269–270. In matters of penal policy, equal protection demands only that "the challenged distinction rationally furthers some legitimate, articulated state purpose." *Id.* at 270. See also *Marshall* v. *United States*, 414 U.S. 417, 428.

A decision by correctional authorities to bar some inmate groups from their prisons entirely (or to impose limitations on the operation of these groups short of a total prohibition on their existence), while at the same time granting other groups full operating privileges, satisfies these constitutional requirements if the decision reflects a good faith judgment as to the rehabilitative and security needs of the correc-

tional system.[18] Here, the State's determination to prohibit inmate union activity within its prisons while permitting two carefully selected organizations—Alcoholics Anonymous and the Junior Chamber of Commerce—to operate inmate chapters meets that criterion. As we already have noted, there is a perceptible rational basis for the fear that an inmate union would loom as a serious potential threat to prison discipline and stability and would frustrate penological goals. By contrast, both of the inmate organizations that the State allows to function within its prisons are of obvious rehabilitative value, and neither group purports to act as a spokesman for its members or is likely to generate unrest.[19]

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[18] Cf. *Greer* v. *Spock*, *supra*, 424 U.S. at 838, n. 10: "The decision of the military authorities that a civilian lecture on drug abuse, a religious service by a visiting preacher at the base chapel, or a rock musicial concert would be supportive of the military mission of Fort Dix surely did not leave the authorities powerless thereafter to prevent any civilian from entering Fort Dix to speak on any subject whatever."

[19] Director Edwards testified that the purpose of the prison chapters of the Jaycees was the "productive association [of inmates] with stable community representatives and the accomplishment of service projects to the community" and that the continued participation of this group in prison life was "contingent upon its effective accomplishment of tasks which are predefined by the Division of Prisons" (A. 125). He described the Alcoholics Anonymous program as follows: "The objectives of the * * * Program are to provide therapeutic support, insight, and an opportunity for productive sharing of experiences among those who have encountered the deteriorative effects of alcoholism. Alcoholics Anonymous is structured on a peer pressure basis which begins while the individual client is confined and is intended to

The choice of organizations permitted to operate within the State's prison system is therefore rationally related to the achievement of important correctional interests. Accordingly, it does not offend the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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have carry over effects into Alcoholics Anonymous groups in the free community" (A. 126).

Regulations of the Bureau of Prisons delegate primary responsibility to each institution to determine which inmate groups may be accommodated. See Policy Statement No. 7300.115A, *supra*. The organizations presently permitted to operate within federal prisons include ethnic support and cultural groups (*e.g.*, Mex-Amer Self Help Group), religious groups (*e.g.*, Fellowship House), community service groups (*e.g.*, Junior Chamber of Commerce), sports and recreational groups (*e.g.*, softball or chess clubs), and social education and therapy groups (*e.g.*, alcohol and drug abuse groups).

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 75-1874

DAVID L. JONES, SECRETARY OF THE
NORTH CAROLINA DEPARTMENT OF CORRECTIONS,
RALPH EDWARDS, COMMISSIONER OF THE
NORTH CAROLINA DEPARTMENT OF CORRECTIONS,
Appellants,

v.

NORTH CAROLINA PRISONERS' LABOR UNION,
INC., ON BEHALF OF ITSELF AND ALL ITS MEMBERS

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

BRIEF AMICUS CURIAE

The Prisoners' Union, Inc.
Michael R. Snedeker
539 Clayton Street
San Francisco,
California 94117

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INDEX

Table of Citations	ii
Statement of Interest	1
Argument	4

TABLE OF CITATIONS

CASES:	PAGE:
Brown v. McGinnis, 225 NYS 2d 497	7
Cooper v. Pate (1964) 378 U.S. 546	5
Cooper v. Pate (1967) 382 F.2d 518	6
Fulwood v. Clemer (1962) 206 F.Supp 370	5
In Re Ferguson (1961) 55 C.2d 663	5
Johnson v. Avery (1969) 393 U.S. 483	6
Knuckles v. Prasse (1969) 302 F. Supp 1036	6
Long v. Parker (1968) 390 F.2d 816	6,7
Marion v. McGinnis (1970) 314 NYS 2d 715	6
Northern v. Nelson (1970) 315 F.Supp. 687	6,7
State ex. rel. Tate v. Cubbage (1965) 210 A. 2d 555	7
Walker v. Blackwell (1969) 411 F.2d 23	6
Wilson v. Prasse (1972) 463 F.2d 1091	6

OTHER AUTHORITIES	PAGE
Specter, A Prison LIbrarian Looks at Writ-Writing, 56 Calif.2 Rev. 365 (1968	8
AMERICAN BAR ASSOCIATION Joint Committee on teh Legal Status of Prisoners, Proposed Standards Relating to the Legal Status of Prisoners, §6.4 Freedom of Association (1976)	9
National Advisory Commission on Correctional Standards and Goals, Corrections, Jan 23,1973, p. 58.	10
Center for the Study of Criminal Justice, Boston University, Model Rules and Regulations in Priosner Rights and REsponsibilities, 1973, p. 28.	10
Keve, Prison Live and Human Worth (1974).	10

STATEMENT OF INTEREST

The Prisoners Union, Inc. hereby respectfully moves for leave to file a brief amicus curiae in support of the appellees, as provided in Rule 42 of the Rules of the Court.

The Prisoners Union is a non-profit, tax-exempt organization incorporated under the laws of the State of California in 1971. It is dedicated to the vigorous, non-violent, imaginative use of every avenue our political system affords to achieve its goals of a uniform and equitable sentencing structure, the restoration of civil and human rights to prisoners, improved working conditions inside prisons, and representation for prisoners in those forums where decisions affecting their lives are made. Its activities in furtherance of these ends have included the sponsorship of seminars on the criminal justice system, regular testimony before legislative committees in California and other states, frequent meetings with prison officials, lawsuits against prison officials, stimulating and responding to the media, appearing before high school, undergraduate, graduate, and law shcool classes and community groups, and publishing a journal, The Outlaw. As of December, 1976, just under 30,000 prisoners around the country and over 100 libraries have subscribed to the Prisoners Union's publication. More than 20,000 prisoners have expressed a desire to become members of the Prisoners Union. It is the oldest and largest organization of its kind in the United States.

Since its inception over five years ago, many of the goals of the Prisoners Union have been achieved; the abolition of the Indeterminate Sentence law in California and the restoration of a variety of civil and human rights to prisoners are examples. Other goals, such as the payment of a minimum or prevailing wage to prisoners for work done or a formal bargaining structure between prison staff and convicts, can only occur through legislative action or administrative policy changes. Between these two groupings are rights to which prisoners are lawfully entitled but which have not been effectively recognized. The most important of these are at issue in the present case.

The Prisoners Union believes that it is essential for prisoners to form a unified organization that functions in a sustained, responsible manner if they are to change present stereotypes of prisoners that make for bad prison policies, and if they are to effectively use the present system to vindicate rights to which they are lawfully entitled. The Prisoners Union further believes that the right of association with other members of the Prisoners Union both inside and outside prison is one of the most precious available to them, because only such participation would make possible the achievement of these goals.

Accordingly, the Prisoners Union has pending in the Superior Court of Monterey County of the State of California a lawsuit filed on behalf of its members in Soledad prison that seeks similar relief to that granted appellees in the court below. The facts are also similar. In California as in North Carolina, prison officials have recognized the right of prisoners to be members of the organization in question. Each organization has a prior existence both inside and outside the prison, a record of positions and actions capable of scrutiny. Whatever decision is reached in this Court will have immediate and profound impact on the Prisoners Union.

The leading issue in the present case is not whether constitutional rights extend to prisoners, but whether legitimate governmental interests, primarily the security of the institution, supercede the exercise of such rights. Appellees will necessarily concentrate on the facts of their particular case. The Prisoners Union wishes to address one point of a wider scope.

Over the last fifteen years or so, the right of prisoners to meet together has been recognized in a variety of contexts despite conclusory predictions by prison officials that violence and disorder would be the likely result. Subsequent history has shown

their predictions to have been without merit; in fact, many prison officials have since admitted that the exercise of these disputed rights has had a generally stabilizing effect on prison order. It is no longer possible to arrive at a realistic evaluation of the credibility of conclusory speculations about threats to prison security without considering this history.

ARGUMENT

THE RIGHT OF PRISONERS TO MEET TOGETHER HAS BEEN RECOGNIZED IN A VARIETY OF CONTEXTS DESPITE CONCLUSORY PREDICTIONS BY PRISON OFFICIALS OF VIOLENCE AND DISORDER; SUBSEQUENT PRACTICE HAS SHOWN THESE PREDICTIONS TO HAVE BEEN WITHOUT MERIT

The opinions and conclusions of prison officials have traditionally been deferred to by both state and federal judges wherever the questions of prisoners rights have been presented to the Court. In recent years, however, there have been occasions when: (a) prisoners have sought to associate with each other in pursuance of rights guaranteed them by the Constitution; (b) prison officials have charged that riots and disorder, or exploitation and manipulation resulting in violence, would be the likely result of recognizing these rights; (c) Judges, following the rationale developed above, have refused to allow officials to impede these rights based merely on official's speculation of disturbance; (d) subsequent history has shown the correctional officials to have been wrong in their fears; in fact, many have since admitted that the exercise of these disputed rights has had a

generally stabilizing effect on prison order, contrary to their earlier predictions.

1. Religious Association

The Nation of Islam, more commonly known as the Black Muslims, or Muslims, spread rapidly through prisons across America in the 1950's and 60's. It was resisted by prison officials, who generally perceived this religion as a dangerous cult of hate, led by ex-convicts, that would lead to racial strife and violence if allowed to promulgate its doctrines in an organized way. The Muslims commenced litigation in an effort to establish their right to worship inside prison; lower courts, uncertain as to how far the Constitution reached inside prison, came to contradictory results (e.g., In re Ferguson (1961) 55 C.2d 663), declined to overrule punitive actions of prison staff and the Director of Corrections, including the Director's refusal to grant "religious" status to Muslims; Fulwood v. Clemer (1962) 206 F. Supp 370, held that "the Muslim faith is a 'religion' within constitutional privions as to freedom of religion; and required the Commission of the District of Columbia to make facilities available to the Muslims equal in every respect to other religions.

Finally the U.S. Supreme Court, in a short per curiam opinion, Cooper v. Pate (1964) 378 U.S. 546, noting that "no state

or municipal government entity has refused to recognize the status of the Black Muslims as a religious movement or declined to allow or urge the normal tax exempt status afforded to churches or parochial schools", held that the Muslims were a religion, and further held that plaintiff, a prisoner, was able to state a claim for infringement of rights under the Civil Rights Act (42 U.S.C. §1983).

Thereafter, with these questions settled, lower courts turned their attention to the regulation of time, place, and manner of religious practice. The right of the Muslims to communally worship has in large part been recognized, generally to the same extent it is extended to other religious faiths. Northern v. Nelson (1970) 315 F. Supp. 687, Walker v. Blackwell (1969) 411 F.2d 23, Long v. Parker (1968) 390 F. 2d 816, Wilson v. Prasse (1972) 463 F. 2d 1091, Marion v. McGinnis (1970) 314 NYS 2d 715, Cooper v. Pate (1967) 382 F.2d 518.

In defining the terms of the right to hold communal worship services, some courts have been quite specific, Knuckles v. Prasse (1969) 302 F. Supp. 1036, Northern v. Nelson, supra; while others have been more general, by assuring the right to services "at reasonable times and places", Sewell v. Pegelow, supra. The most widely used statements are those that Muslims are to be afforded worship services and facilities comparable to those afforded other religious sects within the prison in question.

The question of when prison officials are warranted in suspending the right of Muslims to communally worship has also been considered. Some courts have held that restrictions may be imposed only if breaches of security in fact occur; that prior restraints based on an alleged clear and present danger will not support a ban on the holding of services. State ex. rel. Tate v. Cubbage (1965) 210 A. 2d 555, Brown v. McGinnis, 225 NYS 2d 497. Others have permitted prior restraints if there is a factual showing of clear and present danger to prison security. Long v. Parker (1968) 390 F. 2d 816. No court has allowed conclusory allegations of a threat to prison security or administrative inconvenience to justify infringement of the Muslim's right to communally meet.

The days of punishment and isolation of prisoners for attempting to worship as Muslims are now over; the Nation of Islam is a fact of life in prisons around the country. In San Quentin state prison, where six years ago prison officials were compelled by court to allow Muslims to practice their religion (Northern v. Nelson, supra), a Muhammed Appreciation Day was held on August 28, 1976. There were many speakers from both inside and outside San Quentin; among them was Associate Warden Swagerty. Mr. Swagerty read a proclamation from Warden Robert M. Rees which commended the Muslims for "uplifting the moral character" of the institution by producing desire to attain dignity and self-respect while accomplishing positive goals." (San Quentin News, September 3,1976).

The emphasis placed by the Nation of Islam on self-reliance is now widely perceived as no threat, but rather a rehabilitative effort that is essential if prisoners are to break free of the passive cycle of crime and punishment.

2. Legal Association

Because the law is complex and forbidding to those who are illiterate, poorly educated, or unfamiliar with its ways, prisoners have often looked to each other for assistance. This mutual aid was generally banned by prison officials on grounds that the practice led to coercion and intimidation, and threatened prison security.[1]

A regulation banning such assistance in the State of Tennessee was struck down by the U.S. Supreme Court in Johnson v. Avery (1969) 393 U.S. 483. The Court noted that prison "writ writers" are sometimes a menace to prison discipline; but, absent an available alternative, if many prisoners could not have such assistance, their possibly valid constitutional claims would never be heard in any court. The regulation, therefore, interferred with the paramount right of prisoners to have access to the Courts, and was invalidated. 393 U.S., at 487.

[1]See e.g., Specter, A Prison Librarian Looks at Writ-Writing, 56 Calif. 2 Rev. 365 (1968).

Johnson v. Avery was decided on February 24, 1969. Less than a month after the decision was rendered, California prison officials wholly revised their longstanding regulations flatly prohibiting mutual assistance.

Five years later California correctional officials were pleased about the change they had earlier strongly opposed. Nelson Kempsky, Counsel to the Department, was quoted in a newspaper article about jailhouse lawyers as follows: "(Mutual legal assistance) is now out in the open where the prison administration can see it and get a handle on it, instead of being secretive and behind the back door. The problems which the Department feared simply have not materialized in practice. What we have done is to institutionalize the system of jailhouse lawyers and it has worked pretty well." (Sacramento Bee, July 17, 1974)

3. Political Association

The right of association for prisoners is not a dramatic departure from well-considered opinion on the proper development of our criminal justice system. It has been included in the recommendations and standards of such respected groups as The American Bar Association Committee on the Legal Status of Prisoners,[2] the National Advisory Commission

[2]Proposed standards relating to the legal status of prisoners, American Bar Association Join Committee on the Legal Status of Prisoners, 1976, §6.4 Freedom of Association.

on Criminal Justice Standards and Goals,[3] the Center for Criminal Justice at the Boston University School of Law[4] and the Standard Minimum Rules for the Treatment of Prisoners of the Department of Economic and Social Affairs of the United Nations.

Even among correctional officials there are some who favor the concept of prisoners organizations. Paul W. Keve, formerly Commissioner of Corrections for Minnesota and now Director of Adult Corrections for the State of Delaware, endorses the establishment of prisoner organizations in his book Prison Life and Human Worth.[5]

His reasoning is primarily that the responsibility involved in maintaining an organization and negotiating with people who have different interests (as must be done by free citizens every day), and the increased communication made possible by an organization, is of considerable benefit to prisoners, staff and the larger society. He is quoted by the Court in the opinion below, as stating that in his own institution there is a union by the name of Prisoner Action Committee, "which Keve thinks has in no way endangered the security of the correction system and has sometimes helped management of the prison materially."

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[3]Corrections, National Advisory Commission on Correctional Standards and Goals, Jan. 23, 1973, p. 58

[4]Model Rules and Regulations in Prisoner Rights and Responsibilities, Center for the Study of Criminal Justice, Boston University, 1973, p. 28.

[5]P. Keve, Prison Life and Human Worth (1974).

Director Keve's remarks about the process of change within prison are worth quoting at length.

> The fascinating thing to me is that over the nearly thirty-five years now that I've been in the business, I have seen remarkable changes come about. And I'm sure that probably in every prison in the country there are a few people around that have been working there for years, twenty years or so, who are doing things today, following procedures today and practices with equanimity and serenity that they would not believed possible when they started work there.
>
> I remember when I first heard a man in a juvenile training school say we're thinking of stopping the censorship of mail, and it was a breathtaking position to take at the time, and it's not too many years ago.
>
> Here's an institution full of little boys and I've worked in one myself years ago, and it was just taken for granted that you have to censor every letter coming in and going out. And up to ten years ago most institutions would have taken this for granted. About four or five years ago when I first proposed to my wardens in the Minnesota prisons that we think about backing off from our strict censorship of every letter going in and out, I shook them up considerably. They couldn't take it and we had to go very slow on that, because they just did not

grasp the idea at that point that you can operate a prison without censoring every piece that goes in or out.

And now there's thousands of prison people who ten years ago wouldn't believe that you could operate without censorship and are operating every day with no censorship and have forgotten that a few years ago they couldn't have believed it. There are all kinds of changes of this sort that are coming very, very rapidly.

And I think there's very little difference between some of those things and the business of prisoner organizations. I would just predict that in another twenty years we will look back at it and say what was all the shouting about?

CONCLUSION

Petitioners do not dispute that prisoners' rights may be infringed if their exercise would threaten the reasonable security of the institution or the protection of the public. However, Petitioners strongly dispute the denial of fundamental rights based on talismanic utterance of a pat formula of words unsupported by specific facts. The right of association is a fundamental aspect of the freedom of expression guaranteed by the First Amendment to the United States Constitution.

Our Constitution and the relevant decisional law do not permit conclusory, unsubstantiated speculations that a legitimate governmental interest is endangered to override the fundamental rights of anybody, including prisoners. Recent history teaches us that when courts have not allowed similar speculative fears of prison officials to prevent prisoners from associating, the predictions of violence and disorder did not materialize.

In the present case, there is no justification for fears that allowing members of the Union to meet with outside members and guests present would threaten the reasonable security of the institution. The prisoners Union in North Carolina, like that in California has an extensive history of activity and presence inside the prison system, and no record whatsoever of having been any threat to the reasonable security of any institution. The goals set forth in the proposed charters and by-laws are not the goals of any other inmate activity group, nor could they be effectively approximated by any group other than the Prisoners Union.

We respectfully urge affirmance of the decision of the District Court.

RESPECTFULLY SUBMITTED,

Michael R. Snedeker